Supreme Court, U. S.
FILED
FEB 20 1980
MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1283

CHICAGO TITLE AND TRUST COMPANY, as Trustee under Trust Agreement Dated April 29, 1971, and known as 1555-57 E. 61st Street Land Trust No. 57100; FRANK G. DOSS and LILA B. DOSS, his Wife; HARRY S. NACHMAN and JEAN M. NACHMAN, his Wife; KJELL A. LARSEN and DORIS E. LARSEN, his Wife,

Petitioners,

vs.

THOMAS M. TULLY, Assessor of Cook County, Illinois; PATRICK DOODY, Deputy-Assessor; SEYMOUR ZABAN, Commissioner of the Board of Appeals; HARRY SEMROW, Commissioner of the Board of Appeals of Cook County, Illinois,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, SECOND DIVISION

WILLIAM L. BUTTON,
Attorney for Petitioners,
c/o C. R. Johnson & Co.
7029 N. Clark Street,
Chicago, Illinois 60626
(312) 764-8900

INDEX

Page

Opinion Below..... 3

Jurisdiction..... 4

Questions Presented..... 4

Constitutional Provisions Statutes and Ordinances Involved..... 10

Statement of the Case..... 17

Nature of the Action..... 17

Judgments Appealed From.....20

Notice of Appeal.....23

Operative Facts Material to Questions Presented Showing Manner in Which the Federal Question Was First Raised..... 30

Reasons For Granting the Writ..... 41

Conclusion.....132

Appendix

Opinion and Judgment of Illinois Appellate Court..... A1

Notice of Denial of Petition for Leave to Appeal from Illinois Supreme Court..... A27

Authorities Cited

Page

Cases:

Goodfriend v. Board of Appeals (1973) 18 Ill. App. 3d 412, 305 N.E. 2d 404, 414.....64, 82

Hagar v. Reclamation Dist. No. 108, 111 U.S. 701, 711 (1883).....51,68

Lindheimer v. Nelson, 369 Ill. 313, 316, 16 N.E. 2d 734.....64

Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473 (1961).....52

N.A.A.C.P. v. Button 371 U.S. 415, 427, 428 (1962).....9,18,52, 73,77

People ex rel Edgar v. National Box Co. 248 Ill. 141, 93 N.E. 778.....64

People v. Cook, 1940, 18 N.Y.S. 2d 965, 979, Aff'd 261 AD 993, 27 N.Y.S. 2d 999.....89

People ex rel Stamos v. Public Bldg. Com. 20 Ill. 2d 174.....64, 130

Page

People v. Tibbitts, 1973, 56 Ill. 56 at 59, 305 N.E. 2d 152..... 130,131

Philadelphia Co. v. Stimson, 223 U.S. 605, 621, 622, 32 S.Ct. 340, 345 (1911).....79,80

Raymond v. Chicago Union Traction, 207 U.S. 20, 35,36, 28 S.Ct. 7, 12 (1907)..78,79

Reagan v. Farmers Loan, 154 U.S. 362, 390, 391, 14 S. Ct. 1047, 1051, 1052 (1893).....69,70

Rochester Telephone Corp. v. United States, 307 U.S. 125, 139, 140, 83 L.Ed. 1147, 1157,1158 (1939).....46, 47

Smith v. Department of Registration & Ed. (1952) 412, Ill. 332, 107 N.E. 2d 722.....64

Ex parte Virginia, 100 U.S. 339, 348, 25 L.Ed. 676, 680 (1880).....66

Ex parte Young, 209 U.S. 123, 159, 160, 28 S.Ct. 441, 457 (1908).....80,81

Page

Constitution of the United States

Article III, Sec. 2.....77

Article VI, Par. 2.....77

Amendment V.....73

Amendment XI.....105

Amendment XIV.....8, 23, 35, 44, 49, 50, 54, 56, 64, 65, 66, 67, 68, 70, 75, 78, 83, 84, 85, 87, 90, 94, 97, 98, 99, 105, 108, 109, 111, 114, 116, 118, 119, 121, 122, 123, 124, 125, 127, 128, 131

Constitution of the State of Illinois

Article I, Sec. 1.....65, 73, 76

Article I, Sec. 2....23, 65, 90, 94, 98, 99

Article II, Sec. 1.....23, 47, 74

Article VII, Sec. 4.....89

Article IX, Sec. 1...23, 47, 54, 73, 76, 82

Article IX, Sec. 4 43, 45, 83, 90, 99, 100, 109

Statutes of the United States

Title 18 U.S.C. Sec. 242.....77, 87, 104

Title 28 U.S.C. Sec. 1343(3) 17, 35, 46, 48, 49, 52, 56, 59, 66, 70, 77, 86

Page

Statutes of the United States (continued)

Title 28 U.S.C. Sec. 1257 (3) 23, 24, 46, 47, 48, 49, 56, 59, 66, 70, 77, 83, 85, 87, 104, 108, 111, 115, 121. 122, 123, 124, 127, 128, 131

Title 42 U.S.C. Sec. 1983.....9, 17, 35, 46, 48, 49, 52, 56, 57, 59, 66, 70, 77, 86, 104

Statutes of the State of Illinois

Assessor Empowering Statute, Illinois Revenue Act 1939, Sec. 97, (Ill.Rev.Stat. 1977, ch. 120, par. 578).....21, 24, 115, 124, 129

Board of Appeals Empowering Statute, Illinois Revenue Act 1939, Sec. 116 (Ill.Rev.Stat. 1977, ch. 120, par. 597).....21, 24, 25, 115, 129

Statutory Remedy Illinois Revenue Act 1939, Sec. 194,(Ill. Rev. Stat. 1977, ch. 120, par. 675.).....19, 20, 25, 26, 44, 48, 51, 53, 54, 55, 56, 57, 58, 59, 65, 67, 71, 75, 76, 92, 93, 100, 112, 127

Miscellaneous

Page

Cook County Real Property Assessment Classification Ordinance....76, 82, 84, 88, 89, 92, 93, 94, 96, 97, 98, 99, 100, 109, 115, 123, 124, 130

Vol. 11, John Marshall Journal of Practice and Procedure (1977-78), Review of Real Estate Assessments--Cook County (Chicago) v. Remainder of Illinois, Alan S. Ganz and Dixis S. Laswell, pp. 19-90 .....41, 42, 45, 54, 75

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No.

CHICAGO TITLE AND TRUST COMPANY, as Trustee under Trust Agreement Dated April 29, 1971, and known as 1555-57 E. 61st Street Land Trust No. 57100; FRANK G. DOSS and LILA B. DOSS, his wife; HARRY S. NACHMAN and JEAN M. NACHMAN, his wife; KJELL A. LARSEN and DORIS E. LARSEN, his wife,

Petitioners,

vs.

THOMAS M. TULLY, Assessor of Cook County, Illinois; PATRICK DOODY, Deputy-Assessor; SEYMOUR ZABAN, Commissioner of the Board of Appeals; HARRY SEMROW, Commissioner of the Board of Appeals of Cook County, Illinois,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT, SECOND DIVISION

The Petitioners, Chicago Title and Trust Company, as Trustee under Trust Agreement dated April 29, 1971, and known as 1555-57 E. 61st Street Land Trust No. 57100, Frank G. Doss and Lila B. Doss, his wife, Harry S. Nachman and Jean M. Nachman, his wife, and Kjell A. Larsen and Doris E. Larsen, his wife, respectfully pray that a writ of certiorari issue to review the judgment of the Appellate Court of Illinois, First District, Second Division entered in this proceedings on September 4, 1979.

OPINION BELOW

The opinion of the Appellate Court of Illinois affirming the judgments of the circuit court is reported at 76 Ill.App.3d 336, 395 N.E. 2d 42 (1979). On November 29, 1979, the Supreme Court of Illinois denied the Petitioners' petition for leave to appeal.

JURISDICTION

The decision of the Appellate Court was filed on September 4, 1979. The denial of the Petitioners' Petition for leave to appeal to the Illinois Supreme Court was entered November 29, 1979. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257 (3), since a right has been specially set up and claimed under the Constitution of the United States.

QUESTIONS PRESENTED

Where the Taxpayer-Petitioner, pursuant to order of the United States Court of Appeals for the Seventh Circuit in case Number 76-1722 entered February 22, 1977, "The district court dismissed the action on abstention grounds. We affirm." (R C 441) and "***this Plaintiff has elected to have federal issues of law and fact determined by this court," (R C 438), and the Petitioner has complied with the requirements of N.A.A.C.P. v. Button, 371 U.S. 415,

427,428 (1962) "***by coming here on certiorari ***," "***(A)nd the case is properly before us," then, under these circumstances, the question arises: Does the Petitioner have the right to have his Petition for Certiorari granted on the frounds that the federal courts cannot abdicate a duty imposed by a legislative enactment of Congress, Title 42 U.S.C. Section 1983? Has the Petitioner forfeited his rights by the refusal of the federal courts to take jurisdiction by the use of the abstention doctrine? In this case, does the Petitioner have the right to have the Supreme Court of the United States rule upon his First Amended Federal Complaint?

Where the Taxpayer-Petitioner, as here, is suing the County-officer Respondents personally as individuals in a Federal Civil Rights action for their alleged wrongful conduct in setting an assessment in motion unauthorized in law and being without the authority of the State of Illinois, is the point, made to bar the action, that the unauthorized assessment will support a

valid tax judgment and sale really relevant, competent, and material to the question of whether, in setting the law in motion, the County-officer Respondents acted without the authority of the State of Illinois?

If the county-officer Respondents acted without the statutory or constitutional authority of the State of Illinois, are they then stripped of their official and representative character and answerable personally to the Taxpayer-Petitioner for their alleged wrongful conduct as trespassers upon the fundamental rights of property of the Petitioner?

Petitioner, pursuant to Title 28 U.S.C. Section 1257 (3), hereby draws into question whether the conduct of the County-officer Respondents complained of: (1) was authorized by the State of Illinois under the "opportunity to be heard" requirements of the empowering statutes, Section 97 of the Illinois Revenue Act of 1939 (ch. 120 Ill.Rev.Stat. 1977, par. 578) applicable to the county assessor requiring:

> In counties having a population of 1,000,000 or more inhabitants, the county assessor shall have authority annually to revise the assessment books each year and correct the same as shall appear to him to be just and on complaint in writing in proper form by any taxpayer, and after affording such taxpayer an opportunity to be heard thereon he shall do so at any time, until the assessment is verified. ****.

--and Section 116 of the Illinois Revenue Act of 1939 (ch. 120 Ill.Rev.Stat. 1977, par. 597) applicable to the Board of Appeals requiring:

> In counties containing 1,000,000 or more inhabitants, at its meeting for the purposes of revising the assessment, the board of appeals, upon complaint filed by a taxpayer as prescribed in this Act, may revise the entire assessment of any taxpayer, or any part thereof, and correct the same as shall appear to the board to be just, but in no case shall the assessment of the property of any person or his agent, if either be a resident or had a place of business in the county, shall first have been notified in writing and been given an opportunity to be heard.

(2) was authorized by the State of Illinois under under Article IX Section 4 of the Constitution of the State of Illinois, namely, "Except as otherwise provided by this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide,"

(3) was authorized by the State of Illinois under the Cook County, Illinois, Real Property Assessment Classification Ordinance, Com. 76815, requiring namely, "Sec. 3. The Assessor shall assess and the Board of Appeals shall review assessments on, real estate in the various classes at the following percentages of market value," and

(4) was the conduct authorized by or repugnant to the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States--now set up, specially claimed, and invoked as a means of prohibiting the unconstitutional taking of property without any evidence to sustain the exercise of the taxing power.

Petitioner, pursuant to Title 28 U.S.C. 1257 (3) hereby draws into question the validity of the empowering statute to the Assessor, Section 97 of the Revenue Act of 1939(ch. 120 Ill.Rev.Stat. 1977, par. 578) on the grounds that the language of the statute set out in

question I, "*** the county assessor shall have authority annually to revise the assessment books each year and correct the same as shall appear to him to be just, ***," grants and confers upon the assessor unlimited, uncontrolled, and unbridled discretion and authority to exercise the taxing power upon inhabitants owning real property (1) in direct violation of the requirement of People v. Tibbitts, 1973, 56 Ill. 2d 56, 59, 305 N.E. 2d 152, namely, "Also, due process of law requires that an act shall not be vague, indefinite or uncertain and must provide sufficient standards to guide the administrative body in the exercise of its functions," and(2) in direct violation of and repugnance to the Due Process and Equal Protection Clauses of the Fourteenth Amendment whose protection Petitioner here and now specially sets up and claims under Title 28 U.S.C. Section 1257 (3). Should the language "*** as shall appear to him to be just ***," be declared unconstitutional and void for vagueness?

The Petitioner, pursuant to Title 28 U.S.C. Section 1257 (3) hereby draws into question the validity of the empowering statute granting authority to the Board of Appeals upon the same grounds as that urged challenging the validity of the empowering statute to the assessor, the only difference being a simple change in the language of the "just" grant of authority upon the Board under Section 116 of the Illinois Revenue Act of 1939 (ch. 120, Ill. Rev. Stat. 1977, par. 597) as follows: "*** the board of appeals upon complaint filed by any taxpayer as prescribed in this Act, may revise the entire assessment of any taxpayer or any part thereof, and correct the same as shall appear to be just ****." Should "*** as shall appear to the board to be just ***." be declared unconstitutional and void for vagueness?

Where the Appellate Court barred the Petitioner's First Amended Federal Complaint on the grounds of the prior judgment of sale

by the County Collector and failure of Petitioner to follow the Statutory Remedy, where the remedy applies the conclusive presumption that the assessment officers have fully and faithfully discharged their duties and Petitioner, thereby, is denied and deprived the opportunity to rebut that presumption because the assessment officers are not parties to the proceedings and the Petitioner cannot establish their conduct to be unauthorized in law by statute or constitution, then the Petitioner, pursuant to Title 28 U.S.C. Sec. 1257 (3), hereby and now draws into question whether the Appellate Court unconstitutionally deprived and denied the Petitioner of his right to challenge the validity of the assessment for procedural deficiencies and unconstitutional conduct of the Respondents by means of Title 42 U.S.C. Sec. 1983 and Title 28 U.S.C. Sec. 1343 (3)--the matter complained of being specially set up and claimed as repugnant to the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the

Constitution of the United States now invoked.

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCE INVOLVED

UNITED STATES CONSTITUTION

Article III, Section 1.

"The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time establish. ****."

Article III, Section 2.

"The judicial Power shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made under their authority; ****."

Article VI, Paragraph 2.

"This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

Amendment V.

"*** (N)or (shall any person) be deprived of life, liberty, or property without due process of law. ***."

Amendment XI.

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by Citizens or Subjects of any Foreign State."

Amendment XIV, Section 1.

"*** (N)or shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Amendment XIV, Section 5.

"The Congress shall have power to enforce by appropriate legislation, the provisions of this article."

UNITED STATES STATUTES INVOLVED

28 U.S.C. Section 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Civil Rights Act, Title 42 United States Code Section 1983

Every person who under color of any statute, ordinance, regulation, custom or usage of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party in an action at law, suit in equity, or other proceedings for redress.

Title 28, United States Code, Section 1343 (3):

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the juris-

diction.

Title 18 U.S.C. Section 242 Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

CONSTITUTION OF THE STATE OF ILLINOIS

Article I Bill of Rights Section 1

All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty, and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the governed.

Article I Section 2 Due Process and Equal Protection

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

Article II. The Powers of the State
Section 1 Separation of Powers

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

Article VII Local Government Section 4 (d) County Officers

(d) County officers shall have those duties, powers, and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers, or functions derived from common law or historical precedent unless altered by law or county ordinance.

Article IX Revenue Section 1. State Revenue Power

The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away.

Article IX, Section 4. Real Property Taxation

(a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

(b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. ****.

REVENUE STATUTES OF THE STATE OF ILLINOIS INVOLVED AND RELEVANT SECTIONS OF REAL PROPERTY ASSESSMENT CLASSIFICATION ORDINANCE, COM. 76815 EFFECTIVE JAN. 1, 1974

Section 194 of the "Revenue Act of 1939" (Ch. 120 Ill. Rev. Stat. 1977 par. 675).--*** If any person desires to object pursuant to Section 235 of this Act to all or any part of a real property tax for any year, for any reason other than that the real estate is not subject to taxation, he shall first pay all of the tax installments due, and such payment shall be accompanied by a writing, substantially in the following form ****.

Section 97 of the "Revenue Act of 1939" (Ch. 120 Ill. Rev. Stat. 1977 par. 578).--In counties having a population of 1,000,000 or more inhabitants, the county assessor shall have authority annually to revise the assessment books each year and correct the same as shall appear to him to be just and on complaint in writing in proper form by any taxpayer, and after affording such taxpayer an opportunity to be heard thereon, he shall do so at any time, until the time that the assessment is verified. ****.

Section 116 of the Illinois Revenue Act of 1939 (Ch. 120 Ill. Rev. Stat. 1977 par. 597) --In counties containing 1,000,000 or more inhabitants, at its meeting for the purpose of revising the assessment, the board of appeals, upon complaint filed by a taxpayer as prescribed in this Act, may revise the entire assessment of any taxpayer, or any part thereof, and correct the same as shall appear to the board to be just, but in no case shall the assessment of the property of any person be increased unless such person or his agent, if either be a resident or has a place of business in the county, shall first have been notified in writing and been given an opportunity to be heard. ****.

REAL PROPERTY ASSESSMENT CLASSIFICATION ORDINANCE COM. 76815

Sec. I (a) Cook County hereby establishes the system of classifying real estate for the purposes of assessment for taxation set forth in the following sections.

(b) Definitions:

(2) For the purposes of this ordinance, the definition of "market value" shall be:

"That value, estimated at the price it would bring at a fair, voluntary sale."

Sec. 2. Real estate is divided into the following assessment classes:

Class 3: All improved real estate used for residential purposes which is not included in Class 2.

Sec. 3. The Assessor shall assess, and the Board of Appeals shall review assessments on real estate in the various classes at the following percentages of market value: Class 3: -33%

STATEMENT OF THE CASE

General Background

The contents in Petitioners' Brief presented to the Appellate Court on pages one through nine is now presented to cover: Nature of the Case, Judgments Appealed From, and Notice of Appeal.

Nature of the Action

FRANK G. DOSS, et al., Plaintiffs-Appellants, asserting jurisdictional defects in the empowering statutes and in the assessment procedures used by the Defendants-Appellees, filed their common law tort action of trespass to land in the State court and followed it up with a supplementary Federal Complaint under Title 42 U.S.C. Section 1983 and Title 28 U.S.C. Section 1343 (3) filed in the District Court for the Northern District of Illinois, Eastern Division. Both complaints set forth the same set of facts but invoke and rely upon different remedies.

The District Court dismissed the Complaint on the grounds of comity and the judgment was affirmed by the Seventh Circuit Court of Appeals in order to allow the State courts first opportunity to rule upon the issues raised; that is, the lack of procedural due process in the assessment proceedings and lack of standards in the empowering statutes. Pursuant to N.A.A. C.P. v. Button, the Plaintiffs-Appellants filed their Federal Complaint in the State court together with the State Complaint in order to permit the State courts to have the first opportunity to rule on the federal claim.

Judge Abraham Brussell, Judge of the Circuit Court of Cook County, Illinois, was the first judge to rule upon the Defendants-Appellees Motion to Dismiss the Complaint, and he ruled that the Defendants should Answer for their alleged wrongful conduct, but struck out Plaintiffs' Count I asserting the unconstitutionality of the empowering statutes and any

matter in the Complaint relating thereto.

Secondly, Judge Daniel P. Coman, a Judge of the Circuit Court of Cook County, Illinois, entered an Order allowing the Plaintiffs to file and to combine their Federal claims with the State Complaint. Upon motion of the States Attorney of Cook County, Illinois, for a summary judgment on the grounds that the Plaintiffs had not paid their taxes for the year 1974 under protest and had not followed the requirements of the Statutory Remedy, Section 194 of the Revenue Act of 1939 (ch. 120 Ill. Rev. Stat. par. 675.), and, therefore, their present tort action was barred by the non-election to follow the statutory remedy, the Court granted the Defendants their Motion for Summary Judgment, but the Order was not final.

Thirdly, the Order of Judge Raymond S. Sarnow, Judge of the Circuit Court of Cook County, Illinois entered on April 4, 1978 finalized it when he denied Plaintiffs' Motion to

Vacate the Order of Judge Coman granting the Defendants a summary judgment. On February 23, Judge Sarnow dismissed the Plaintiffs' First Amended Complaint on the grounds that the statutory remedy completely encompassed the remedies available to the Plaintiffs and their non-election to follow the statutory remedy barred the Federal action. Appeal from these Orders is now before this Court.

Judgments Appealed From

Two orders of the Honorable Raymond S. Sarnow are appealed from. The first dated February 23, 1978 (Tr. p. C 485) and omitting the caption reads as follows:

ORDER

This cause coming on to be heard on Defendants' Motion to Strike and Dismiss the "Annexation of Plaintiff's Federal Claims to State Second Amended Complaint" and on Defendants' Motion to Dismiss Plaintiffs' "First Amended Federal Complaint", due notice served, the court being fully advised in the premises,

the court having heard counsel,

It is hereby ordered that:

1. Defendants' Motion to Strike and Dismiss the "Annexation of Plaintiffs' Federal Claims to State Second Amended Complaint" is sustained, and the "Annexation of Plaintiffs' Federal Claims to State Second Amended Complaint" is dismissed with prejudice.

2. Defendants' Motion to Dismiss Plaintiffs' "First Amended Federal Complaint" is dismissed with prejudice.

3. The court, inter alia, makes a specific finding that both Section 578 as it applies to the Assessor and Section 597 as it applies to the Board of Appeals of Chapter 120 empowering said officials to assess and correct assessments as shall appear to them to be just is constitutional.

4. The court finds no just cause to delay enforcement or appeal from the entry of this order.

February 23, 1978

ENTER:

Judge Raymond S. Sarnow

The second Order appealed from is dated April 4, 1978 entered by the Honorable Judge Raymond S. Sarnow (Tr. C 510) in that it finalizes the Order of Judge Coman granting the Defendants a Summary Judgment. Omitting the caption, the Order reads:

ORDER

This cause coming on to be heard on Plaintiff's Motion to Vacate Order of February 23, 1978 granting Defendants' Motion to Dismiss Plaintiffs' First Amended Federal Complaint and to Vacate Judge Coman's Order Granting Defendants a Summary Judgment, due notice served, the parties in court by counsel, the court having heard counsel and having considered the entire record and the court being fully advised in the premises,

It is hereby ordered that:

1. Plaintiffs' Motion to Vacate Order of February 23, 1978 granting Defendants' Motion to Dismiss Plaintiffs First Amended Complaint and to vacate Judge Coman's Order granting Defendants a summary judgment is denied.

2. The Court finds no just cause to delay judgment or appeal from the entry of this order.

April 4, 1978

ENTER:

Raymond S. Sarnow
Judge

Notice of Appeal

The section, "Specification of relief sought," is set out in full as follows:

Specification of relief sought;

A. Pursuant to the provisions of Ill. Const. Art. I Sec. 2 (1970), Ill. Const. Art. 2, Sec. I (1970), Ill. Const. Art. 9 Sec. I (1970), U.S. Const. Amend. XIV, 28 U.S.C. 1257

(2) (3) now set up and claimed under the United States Constitution, Plaintiffs-Appellants claim that, by depriving them of their right to the enforcement of the statutory and due process fair hearing requirements before the County assessment officers, a requirement mandatory and jurisdictional to an assessment authorized in law, the Illinois State trial courts have decided a federal question of substance in a way not in accord probably with the applicable decisions of the United States Supreme Court. In addition thereto, Plaintiffs-Appellants hereby challenge the constitutionality of the relevant portions of the Illinois Revenue Act of 1939, section 97, Amended P.A. 79-1454 Sec. 56 eff. Aug. 31, 1976 Ill. Rev. Stat. 1977, ch. 120, par. 578, i.e., "*** the county assessor shall have authority annually to revise the assessment books each year and correct the same as shall appear to him to be just ***," and section 116 of the Illinois Revenue Act of 1939, Amended P.A.

76-2254, Sec. 1, eff. July 1, 1970 (Ill. Rev. Stat. 1977, ch. 120, par. 597), i.e., "*** the board of appeals *** may revise the entire assessment of any taxpayer, or any part thereof, and correct the same as shall appear to the board to be just ***," on the grounds that the Illinois General Assembly has exceeded the legislative power granted to it by the People of the State of Illinois by having, without constitutional authorization, improperly delegated revenue arising authority to the County assessment officers to assess and to correct assessments on the real estate of inhabitants as shall appear to be "just" without standards or limitations governing the scope of discretion conferred.

B. Furthermore, Plaintiffs-Appellants hereby challenge the constitutionality of section 194 of the Illinois Revenue Act of 1939, Amended P.A. 79-350, Sec. 1 eff. Oct. 1, 1975 (Ill. Rev. Stat. 1977, ch. 120, par. 675) as being unconstitutional in its application by State

officers depriving the Illinois real estate taxpayer of the benefit of market value assessments secured by ordinance and discriminatorily substituting the substantially higher assessment rate required by the Illinois "constructive fraud doctrine" upon those taxpayers electing to use the statutory remedy.

C. The same statutory remedy, Ill. Rev. Stat. 1977, ch. 120, par. 675, has been improperly and unconstitutionally applied in the instant case without authority in law to deprive Plaintiffs-Appellants of their right to challenge the assessment for jurisdictional defects. The face of the statute reads in part: 'If any person desires to object pursuant to Section 235 of this Act as to all or any part of a real property tax for any year for any reason other than the real estate is not subject to taxation (Emphasis added.), he shall first pay all of the tax installments due ***," and, where, as here, the assessment is jurisdictionally defective for

failure to provide a fair hearing on the assessment and standards in the empowering statutes, then the real estate involved is not subject to taxation and is within the reach of the exception of the statute, i.e., "***for any reason other than the real estate is not subject to taxation ***." Plaintiffs-Appellants use of the statutory remedy would amount to an election of remedies and waiver of jurisdictional defects thereby destroying the very constitutional and statutory claims sought to be enforced. Clearly, the statutory remedy is inadequate and incomplete to provide relief from jurisdictional defects on its face. Exation of a tax without jurisdiction to impose it is a taking of property without due process of law. Plaintiffs-Appellants cannot be compelled to exhaust a remedy that is (1) neither complete nor adequate to provide appropriate relief from jurisdictional defects complained of, and (2) operates to wipe-out the very claims sought to be vindicated. Yet, the Defendants-Appellees were granted a

summary judgment on the State complaint and dismissal of the Federal Complaint supplementary to the State remedy on the grounds, that Plaintiffs-Appellants, by their failure to exhaust the administrative remedy, were barred to bring their Complaint asserting jurisdictional defects in the empowering statutes, and lack of fundamental fairness in the assessment proceedings.

D. Plaintiffs-Appellants hereby specially set up and claim that the matter set forth in Paragraph A, B, and C under this specification of relief sought is a direct invasion of, or invasion of, one or more of the provisions hereinabove set out in the first sentence of Paragraph A--provisions presently invoked and relied upon in order to raise and to assert important State and Federal substantial questions of due process and equal protection that concern (I) the constitutional rights of real estate property owners, and (2) matters of public importance relating to State revenue raising power.

E. Reverse and remand the case to the trial court with the following directions:

I. Vacate the order granting the Defendants-appellants a summary judgment on the State portion of the Complaint;

2. Vacate the order dismissing Plaintiffs-Appellants First Amended Federal Complaint with instructions that the Defendnats-Appellees Answer the Complaint or otherwise plead;

3. Enter an order upon the County Collector of Cook County to refund to Plaintiffs-Appellants the sum of two thousand seven hundred sisty-seven dollars and seventy-one cents ($2,767.71) plus interest, an amount paid on January 4, 1978 to the County Collector under compulsion on the assessment for the year 1974 allegedly unauthorized in law, having been obtained (I) by depriving the Plaintiffs-Appellants to a fair hearing on the assessment before the Deputy-Assessor and the Board of Appeals, and (2) by the County officers functioning under unconstitutional empowering statutes lacking standards or limitations upon the scope

of discretion and full "just" authority conferred.

Dated this 2nd day of May, 1978.

FRANK G. DOSS, et al.,
Plaintiffs-Appellants
by WILLIAM L. BUTTON,
their attorney,
c/o C. R. Johnson & Co.
7029 N. Clark Street
Chicago, Illinois 60626
Telephone: 764-8900

Operative Facts Material to Questions Presented Showing Manner in Which the Federal Question was First Raised

The "Statement of Facts", appearing on pages 32 to 37 of the Petitioner's Brief presented to the Appellate Court, is set forth as follows:

STATEMENT OF FACTS

Title to the subject real estate is held by the Chicago Title and Trust Company as Trustee under Trust Agreement dated April 20, 1971 and known as 1555-57 E. 61st Street Land Trust No. 57100. The subject real estate is

improved with a three story brick six-flat being converted into apartments being some sixty or more years old.

The purchase price of $3,500 was paid the Seller in 1971. The assessed valuation was then set at 20,000 so that the full market value set by the Assessor was three times that amount, approximately $60,000 or more than seventeen times the purchase price. At the time of the purchase the building was in a run-down condition, subject to building violations, and a target vor vandalism.

On December 11, 1974, Plaintiff, Mr. Frank G. Doss, having filed a Complaint with the Assessor pursuant to statute, appeared before the Deputy-Assessor, Mr. Patrick Doody, with his appraiser, bookkeeper, and owner of 1/4 interest in the property. The appraiser set the market value at $17,500. The Board of Appeals had previously reduced the market value from $60,000 down to $45,000. It was

pointed out to the Assessment-Examiner that the building was purchased for only $3,500 in a run-down condition, the Taxpayer, by having invested his time, effort, and money, had rehabilitated it; and, shortly afterwards, sold a one half interest in it to others for $9,250. The fair cash value as established by the sale transaction was $18,500.

Mr. Culhane's appraisal report included an income and expense statement indicating a gross income for the year in question of approximately $15,000, but the statement also showed that after allowance for proper deductions, an adjusted income of approximately $450 is indicated before the application of the deduction for real estate taxes. After payment of the real estate taxes on the building it was operated at a considerable loss.

Mr. Doody, the Assessment Examiner, took the $15,000 gross income figure, multiplied it by three and said that the full market value of

the building was $45,000 and that the assessed valuation of approximately 14,000 under the evidence was proper. This method of determining market value was immediately objected to and it was pointed out that the sale of the 1/2 interest in the property established the fair cash value of the building at $18,500.

The Deputy-Assessor then replied that it was too late to bring that point up then because there was no mention made of it in the supporting data. The Taxpayer's attorney then asked for permission to examine the supporting data, and, after thumbing through it, pointed out to Mr. Doody that evidence of the sale was contained in the supporting data and that it was not too late to bring the point up.

Mr. Doody then said the transaction was not bona fide and that he was free to disregard it.

On February 26, 1975 Plaintiff-Appellant, Frank G. Doss, appeared before the Board of Appeals with his attorney, having served

notice upon the Assessor of his motion designated:

Caption.	Complaint Numbers
Frank G. Doss, Complainant	11483-4 6545-47 S. Kenwood and 1555-57 East 61st Street

TO: HONORABLE SEYMOUR ZABAN,
COMMISSIONER

TAXPAYER'S OBJECTION BEFORE THE BOARD OF APPEALS TO AN ASSESSMENT BASED UPON A GROSS MULTIPLE OF THREE TIMES THE ANNUAL RENT, I.E., $15,000 TIMES THREE $45,000 "FAIR CASH VALUE" SO THAT THE ASSESSMENT FIGURE EXCEEDS THE SELLING PRICE OF THE BUILDINGS OF $20,000 IN AN ACKNOWLEDGED DEPRESSED AREA.

FRANK G. DOSS, Complainant alleges:

1. The taxpayer, FRANK G. DOSS, Complainant, hereby asserts and claims the protection of his substantive rights secured and guaranteed him under the Due Process and Equal

Protection Clause of the 14th Amendment of the Constitution of the United States, 42 U.S.C. Section 1983 and 28 U.S.C. Section 1343 prohibiting the confiscation of property rights.

2. That the legal acid test for assessment purposes is what the building will sell for in the open market in a bona fide real estate transaction.

3. That the jurisdiction of the Taxing Officials of Cook County to assess an owner's property for the purpose of applying an equalization factor and tax rate is limited to the fair cash value of the property and no more.

4. That, where the taxing officials knowingly choose to ignore the actual sales price criterion as a basis of value for assessment purposes, then said officials do so at their peril and are liable in damages for assessments based upon conjecture and guesswork and applying some standard other than the fair cash value standard wherein the land selling

price is the controlling factor. Taxing officials, by applying the gross multiple of three times the gross annual income to establish the value of property for assessment purposes, do so without sanction in law. Where, as here, the gross rent multiple is in conflict with the fair cash value standard wherein the selling price controls, the fair cash value governs the assessment and not the three times the gross annual rent multiple.

5. That where, as here, the Taxpayer cannot sell his converted six flat buildings for more than $20,000 because the building is located in an acknowledged depressed area, then the fair cash value controls in spite of the fact that the gross income of the building without allowing for expenses is $15,000.

6. That the same building in another location might well be worth the gross annual rent multiple of $15,000 times three of $45,000, but that is not the issue. The issue is what the

buildings are worth in a recognized depressed neighborhood. The taxing officials cannot knowingly and deliberately ignore the location element of value in the assessment. Furthermore, it is illegal for the assessment officers to ignore the selling price and to base the assessment upon the annual gross rent multiplier of three in complete disregard of the controlling criterion of value, that is, the actual selling price of the land and the improvement.

WHEREFORE, the Complainant, FRANK G. DOSS, requests relief under both state and federal law from the over-assessments hereinabove complained of by the Taxing Officials of Cook County by the entry of a revision order that will bring the assessments complained of in proper alignment with the selling price of the subject buildings at $20,000. Further, that, where the selling price of the real estate is $20,000 and the assessment ration is one third of the selling price, then $7,000 assessed valuation requested complies with the fair cash

value standard and the assessment is reasonable and proper.

Respectfully submitted

FRANK G. DOSS, Complainant

On Motion of the Taxpayer at the hearing held before Commissioner Seymour Zaban and Harry Semrow on February 26, 1975 at Room 601 at the Board of Appeals at approximately 10:00 A. M. the following took place:

MR. ZABAN: "We have been studying your request for lower taxes. I don't want to sound confiscatory, but we have not come up with any justifiable way to give you relief."

MR. BUTTON: "Your Honor, we have presented documents proving from sale and appraisal that the actual cash value is no more than $20,000."

MR. ZABAN: "We cannot pay our police and firemen on that basis. We had a value on this property at $60,000 and we gave you a substantial cut last time and that is all we can do."

MR. BUTTON
to
MR. ZABAN: "If the value is not $20,000, what is the value?"

MR. ZABAN: "For tax purposes we placed that value at $45,000. Maybe I should not have said that but I did and I will stick with it. I do not want to do anything that will hurt you in court.

MR. SEMROW
to
MR. DOSS: "What is the difference between the income on this property this year and last year?"

MR. DOSS: "The income is about the same."

MR. SEMROW: "Then why are you asking for lower taxes again this year?"

MR. BUTTON: "Your Honor, we are basing our request on the actual cash value of the property."

MR. SEMROW: "Forget that actual cash value stuff. This is what I am going by (Pointing to the income and expense sheet.) And if you don't like it, you can take us to court."

MR. BUTTON: "It is in court."

MR. SEMROW: "O.K. Then, get out of here."

REASONS FOR GRANTING THE WRIT

An important discussion of the general problem facing the Cook County, Illinois real property taxpayer and now presented to this Honorable Court for a judicial investigation, bringing to light just how the Illinois Constructive Fraud Doctrine and the compulsory use of the "exclusive" statutory remedy where the Doctrine is applied against the Taxpayer and is used by the Illinois Courts as a dodge in order to circumvent the constitutional limitation placed upon the taxing power by Article IX of the Illinois Constitution of an ad valorem tax, appears in Volume 11, John Marshall Journal of Practice and Procedure (1977-78), Review of Real Estate Assessments--Cook County (Chicago) vs. Remainder of Illinois, by Alan S. Ganz and Dixie S. Laswell, pages 19-90.

At page 83 the authors state: "*** The doctrine of constructive fraud prevents the Cook

County real estate taxpayer from obtaining any meaningful judicial review of the Assessor's or Cook County Board of Appeals decisions concerning the Cook County taxpayer's real estate assessment. Proof of assessment over-valuations from 1584% to 3.8% according to Illinois Supreme Court decisions was insufficient to prove constructive fraud so as to permit the court to review the real estate tax assessment. ****."

In place of the magical word "abracadabra," a term well known to the public and used by magicians for centuries, the Illinois Courts use the phrase "constructively fraudulent" against the Taxpayer in order to perform their feats of legal legerdemain of doubling or tripling the market value of the Taxpayer's real estate for purposes of taxation and to hold the Taxpayer spell-bound in the process. The word "valuation," as a word of limitation requiring an ad valorem system of taxation is completely

ignored. That is, except when the word "valuation" may be used by the Illinois Appellate Court as a legal justification for the fact that the empowering statutes are without the indispensable standards governing the scope of discretion conferred upon the assessment officers and required by law.

The constitutional mandate from the People of the State of Illinois, binding upon the Illinois Courts, the Executive Branch, including the Assessor and the Board of Appeals, and the Illinois legislature is expressed in Article IX of the Illinois Constitution as follows: "Section 4 Real Property Taxation (a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law."

Unbeknown generally is the fact that this provision of the Illinois Constitution, ignored

completely by state instrumentalities, is enforceable by the Taxpayer through the Equal Protection Clause of the Constitution of the United States when the Clause is properly called into activity. It guarantees, secures, and protects the Taxpayer from discrimination in the enforcement of the law by state agencies. It is the purpose of this Petition for Writ of Certiorari to call the Equal Protection Clause and the Due Process Clause of the Constitution of the United States into activity as a limitation upon illegal and unconstitutional state practices in assessing and reviewing assessments upon real estate taxpayers in Cook County, Illinois.

For example, where the Taxpayer uses the statutory remedy, the presumption that the Assessor of Cook County, Illinois and the Board of Appeals have fully and faithfully discharged their manifold duties is applied against the taxpayer and the burden is thereby cast

upon him to prove to the satisfaction of the presiding judge that the assessment is constructively fraudulent. The meaning to be attached to the "constructively fraudulent" criterion is entirely subjective and dependent upon the sound discretion of the presiding judge. The cases cited by Mr. Ganz and Ms. Laswell shed light upon how well or poorly this discretion has been applied in carrying out the constitutional mandate from the People that the taxing power shall be applied according to "valuation." Relief from the assessment complained of is measured and granted by the judge not according to the valuation of the real property as required by Article IX of the Illinois Constitution, but according to how well the Taxpayer has established his theory of constructive fraud.

Consequently, FRANK G. DOSS, et al., the Taxpayer, proceeding pursuant to Title 28

U.S.C. Sec. 1257 (3), Title 42 U.S.C. Sec. 1983, and Title 28 U.S.C. Sec. 1343 (3) and petitioning for the granting of a Writ of Certiorari, hereby specially sets up and claims under the Constitution of the United States that, under the doctrine of Administrative Finality, the authority of the Illinois courts extends no further than an examination of the record to determine whether the assessment made and reviewed is supported by the evidence. Mr. Justice Frankfurter, speaking for the Supreme Court, made this point clear in Rochester Telephone Corp. v. United States, 307 U.S. 125, 139, 140, 83 L.Ed. 1147, 1157, 1158 (1939) when he stated:

> The other is the doctrine of administrative finality. Even when resort to courts can be had to review a Commission's order, the range of issues open to review is narrow. Only questions affecting constitutional power, statutory authority and

> basic prerequisites of proof can be raised. If these legal tests are satisfied, the Commission's order becomes incontestable. (citing cases.)

Further, pursuant to the said Section 1257 and claiming the protection of the Constitution of the United States, the Taxpayer specially sets up and claims that the Illinois courts have illegitimately and unconstitutionally usurped the legislative function of applying the taxing power in direct violation of Article II, Section 1 of the Illinois constitution, "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another," and in direct violation of Article IX, "The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided by this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away"--constitutional provisions

mandating that the taxing power is vested with the legislative branch. Except as to the power of the court to make a judicial investigation as to whether the assessment complained of is supported by the evidence presented to the assessment officials, the decision of the Board of Appeals is final and incontestable. Taxing power, applied by the Illinois courts under the term "constructive fraud", is therefore illegitimate and unconstitutional.

Proceeding pursuant to Title 28 U.S.C. Section 1257 (3), Title 42 U.S.C. Sec. 1983, and Title 28 U.S.C. Section 1343 (3) and under the Constitution of the United States, the Taxpayer, respectfully requesting that the Writ of Certiorari issue, hereby specially sets up and claims that the Illinois Statutory Remedy is presently being used by the Illinois Courts as an instrument of fraud against the Taxpayer in that, since the Assessor and the Board of Appeals are not parties to the proceedings,

the Taxpayer is precluded from establishing that they did not fully and faithfully discharge their manifold duties and the presumption that they have fully and faithfully complied with the mandatory and jurisdictional requirements of the empowering statutes and State and Federal guarantees of Due Process and Equal Protection is applied against the Taxpayer as a conclusive presumption and rule of law. This presumption, applied as a rule of law, acts as the backbone for the application of the Illinois Constructive Fraud Doctrine.

Proceeding pursuant to Title 28 Section 1257 (3), Title 42 U.S.C. Section 1983, and Title 28 U.S.C. Section 1343 (3), the Taxpayer, FRANK G. DOSS, et al., hereby specially sets up and claims, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States, that the Taxpayer has a federally and constitutionally protected procedural right, deprived and denied

him by judicial agencies of the State of Illinois, to use the common-law action of trespass to property in order to vindicate a disputed claim against the creation and imposition of a tax lien interest in his real property by State agencies, agencies acting without evidence to support the exercise of the taxing power and acting arbitrarily according to their own will and not the will of the law--all state actions complained of being unauthorized outside the law and committed in direct violation of the substantive provision of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States hereby specially set up and claimed protec ting the Taxpayer and his property from the exercise of just such aggressive and arbitrary State action invading his inherent and inalienable right to the peaceful possession of his property.

Furthermore, in order to challenge the conclusive presumption and rule of law applied by

the judge at the Statutory Remedy proceedings that the assessment officers have fully and faithfully discharged their duties, the Taxpayer, through the use of nonstatutory remedies, has a perfect federally protected claim to challenge the validity of the assessment. In Hagar v. Reclamation District No. 108, 111 U.S. 701, 711 (1883), Mr. Justice Field, speaking for the Supreme Court said: "This decision covers the cases at bar. The assessment under consideration could, by the law of California, be enforced only by legal proceedings, and in them any defence going either to its validity or amount could be pleaded." The Taxpayer has the right in challenging the validity of the assessment to establish that the assessment officials have not fully and faithfully discharged their duties where, as here, it is alleged that the assessment decisions made were based upon nonexistent evidence, upon the exercise of arbitrary power, and performed under un-

constitutional empowering statutes which show facially that the standards governing the scope of discretion conferred are lacking.

In order to press and to vindicate his federal claims, the Taxpayer also, under Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473 (1961), has the federally protected right to use the supplementary Federal Civil Rights Remedy, Title 42 U.S.C. Sec. 1983 and Title 28 U.S.C. Sec. 1343 (3) in the Circuit Court of Cook County, Illinois where has has elected to have his federal issues tried by a state court. Here, the Taxpayer, following the application of Pullman Abstention by the Seventh Circuit, the Taxpayer elected to have his federal issues tried in the State courts under the rule stated in N.A.A.C.P. v. Button, 371 U.S. 415, 427:

> Where, however, the party remitted to the state court elects to seek a complete and final adjudication of his rights in the state courts, the District Court's reservation of jurisdiction is purely formal, and does not

> impair our jurisdiction to review directly an otherwise final state court judgment. Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45. We think it clear that petitioner made such an election in the instant case, by seeking from the Richmond Circuit Court "a binding adjudication" of all its claims and a permanent injunction as well as declaratory relief, by making no reservation as to the disposition of the entire case by the state courts, and by coming here directly on certiorari. Therefore, the judgment of the Virginia Supreme Court of Appeals was final, and the case is properly before us.

When Judge Sarnow denied the Taxpayer's First Amended Federal Complaint, he deprived the Taxpayer of his right to have the federal claims vindicated. "The statutory remedy encompasses all other taxpayer remedies," rule applied by Judge Sarnow in order to dismiss the Taxpayer's federal complaint is a rule challenged by this Petition for Certiorari. Where the manner and form in which the "exclusive" Statutory Remedy is applied bars the Taxpayer from attacking the presumption that the assessment officials have fully and faithfully discharged their duties, then the Statutory

Remedy is an inadequate remedy in which to seek inforcement of the federal right to attack the validity of the assessment. Therefore, the Taxpayer, under these circumstances, cannot be compelled against his will lawfully and constitutionally to use the Statutory Remedy. Such compulsion by judicial coercion is the deprivation of the right of the Taxpayer to challenge the validity of the assessment protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States now asserted set up and specially claimed against judicial action taken by Judge Sarnow and the Justices of the Appellate Court of the State of Illinois.

The law review article authored by Mr. Ganz and Ms. Laswell point out that the Illinois State courts avoid the limitation placed upon the taxing power by Article IX of the Illinois Constitution of an ad valorem tax through the use of the Constructive Fraud Doctrine. This Petition for Certiorari, on the other hand, points out exactly the legal mechanics of "how" it is done. Illegitimate and unconstitutional assessment practices are legitimated in the Statutory Remedy by disallowing the Taxpayer the opportunity to establish that the assessment officers have not fully and faithfully discharged their duties, since they are not parties to the action. The Illinois Courts compel the Taxpayer to use the Statutory Remedy where such objections are automatically cut off and the conclusive presumption of regularity of the tax assessment proceedings is applied as a rule of law against the Taxpayer. By this improper means and abuse of process, the fact that the tax assessment has been procured through the use of arbitrary taxing power is of no importance and federal rights are thereby invaded "legally."

After the Taxpayer has, as now, set out in step-by-step detail just how the Illinois Statutory Remedy, as the "exclusive" Taxpayer rem-

edy, is used under judicial compulsion to whitewash any jurisdictional defects in the assessment proceedings before the Assessor and the Board of Appeals and the presumption that they have fully and faithfully discharged their duties is applied against the Taxpayer as a matter of law and the Taxpayer must establish "constructive fraud" in the assessment--then the picture of the Taxpayer, claiming as early as his Notice of Appeal that the Statutory Remedy as applied is unconstitutional even though facially it is valid, starts to come through a little clearer and with greater impact.

Therefore, the Taxpayer, FRANK G. DOSS, et al., pursuant to Title 28 U.S.C. Sec. 1257 (3), Title 42 U.S.C. Sec. 1983, and Title 28 U.S.C. Sec. 1343 (3) and claiming the protections and guarantees provided by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitut-

ion of the United States, hereby objects:

That the Cook County Statutory Remedy, Section 194 of the Illinois Revenue Act of 1939, Amended P.A. 79-350, Sec. 1 eff. Oct. 1, 1975 (Ill. Rev. Stat. 1977, ch. 120, par. 675) is a legislative enactment used as an instrument in this case unconstitutionally by the Illinois trial and Appellate Courts to deprive and to deny the Taxpayer of rights secured and enforceable through the Federal Civil Rights Act, Title 42 U.S.C. Sec. 1983 to challenge the validity of the assessment proceedings--federal rights to an assessment based upon the evidence presented at the assessment hearings--deprived and denied--and to an assessment free from the exercise of arbitrary conduct by the assessment officers acting under a valid empowering statute with governing standards--deprived and denied.

Consequently at this point, it is appropriate to renew and to preserve the federal question raised in the Taxpayer's Brief before the Appellate Court on pages 7-8:

C. The same statutory remedy, Ill. Rev. Stat. 1977, ch. 120, par. 675, has been improperly and unconstitutionally applied in the instant case without authority in law to deprive Plaintiffs-Appellants of their right to challenge the assessment for jurisdictional defects. The face of the statute reads in part: "If any person desires to object pursuant to Section 235 of this Act as to all or any part of a real property tax for any year for any reason other than the real estate is not subject to taxation (Emphasis added.), he shall first pay all of the tax installments due ***," and, where, as here, the assessment is jurisdictionally defective for failure to provide a fair hearing on the assessment and standards in the empowering statutes, then the real estate involved is not subject to taxation and is within the reach of the exception of the statute, i.e., "*** for any reason other than the real estate is not subject to taxation ***." Plaintiffs-Appellants use of the statutory remedy would amount to an election of remedies and waiver of jurisdictional defects thereby destroying the very constitutional and statutory claims sought to be enforced. Clearly, the statutory remedy is inadequate and incomplete to provide relief from jurisdictional defects on its face. Exaction of a tax without jurisdiction to impose it is a taking of property without due process of law. Plaintiff-Appellants cannot be compelled to exhaust a remedy that is (1) neither complete nor adequate to provide appropriate relief from jurisdictional defects complained of, and (2) operates to wipeout the very claims sought to be vindicated. Yet, the Defendants-Appellees were granted a summary judgment on the State complaint and dismissal of the Federal Complaint supplementary to the State remedy on the grounds that Plaintiffs-Appellants, by their failure to exhaust the administrative remedy, were barred to bring their Complaint asserting jurisdictional defects in the empowering statutes and lack of fundamental fairness in the assessment proceedings.

The proximate cause of the Taxpayer's grievance was the conduct of Judge Sarnow set forth on pages 88-92 of the Taxpayer's Brief before the Appellate Court in which the federal question, now renewed and preserved, was raised by the following means and in the following manner:

Plaintiffs-Appellants, proceeding under (1) Title 28 U.S.C. Sec. 1257, (2) Title 42 U.S.C. Section 1983, and Title 28 U.S.C. section 1343, hereby set up, claim, and specially plead the following:

Frank G. Doss, et al., Plaintiffs-Appellants, hereby allege and complain that in the proceedings before the Honorable Raymond S. Sarnow, Judge of the Circuit Court of Cook County, Illinois, on February 23, 1978, acting under color of the Statutory Remedy, Section 194 of the Revenue Act of 1939 (Ch. 120. Ill. Rev. Stat. par. 675) subjected the Plaintiffs-Appellants to the deprivation of their fundamental right of property and citizenship to challenge the proceedings before the Deputy-Assessor, Patrick Doody, on December 11, 1974 and the proceedings before Commissioner Zaban

and Commissioner Semrow of the Board of Appeals for lacking in fundamental fairness and due process of law resulting in the unconstitutional creation of an unauthorized tax lien interest upon the Plaintiffs-Appellants real property by his ruling on February 23, 1978 when he dismissed the Plaintiffs-Appellants First Amended Federal Complaint on the following discriminatory legal basis:

THE COURT: Assume full and complete agreement by the county official, and by this Court and the court reporter with your position. How does that gainsay what this Court has directed your attention and observation that there is an avenue of relief specifically accorded you. The Illinois Supreme Court has spoken often about the complete encompassment of that administrative review remedy to accord taxpayers full and complete relief. They need not bother with any common-law remedies or other statutory remedies.

MR. BUTTON: I am not compelled to waive my constitutional rights.

THE COURT: You're not waiving them.

MR. BUTTON: --To a fair hearing. I am not required where the assessment officials have failed to comply with the requirements of the empowering statutes to seek relief under the statutory remedy.

THE COURT: That's the construction you and this Court differ about.

MR. BUTTON: In other words, I'm stating that a condition precedent--

THE COURT: I understand your position, counsel, fully.

MR. BUTTON: Judge Leighton and Judge Mejda made the point clear.

THE COURT: I fully understand your position and this Court hold contrary to your position. Now whats before me?

Now, this ruling of the statutory remedy encompassing all other statutory remedies must be compared with the earlier statement of the Court:

THE COURT: That's entirely different from an unauthorized tax. That's the distinction, and that's the distinction the Illinois Supreme Court followed in the Owens Illinois Glass Company case when they permitted independent statutory proceedings, such as declaratory judgment to be filed even though there was an administrative review provided in that statute. The distinction there was where it's an unauthorized tax, then the taxpayer need not follow his administrative remedy, and administrative review is not the exclusive appellate relief that he has. That is not your case.

MR. BUTTON: Yes, it is.

THE COURT: You are not saying that the taxes aren't authorized by law. You're saying that the -- the method of appraisal is erroneous.

MR. BUTTON: I'm not saying the method of appraisal. I'm saying the conduct of the proceedings is unconstitutional because its lacking in fundamental fairness, and that's

a constitutional guarantee. In other words, a citizen--

THE COURT: But the tax which this quote, "unfair hearing" was conducted --

MR. BUTTON: Yes.

THE COURT: --You are not saying it is unauthorized.

MR. BUTTON: I am. I'm saying its unauthorized because they did not comly with the mandatory jurisdictional facts of a fair hearing precedent to an authorized assessment. I'm saying the language of the statute provides--I'm stating that the language of the empowering statutes state that the taxpayer is entitled to notice and an opportunity to be heard and these are conditions precedent to an authorized assessment. After they have complied with the requirements of the statute, then and only then does the tax become one authorized in law and does it become one to which the statutory remedy applies; but as a condition precedent jurisdictional fact, a constitutional guaranteed right of the taxpayer is that before any citizen can be deprived of life, liberty, or property, he must have a fair hearing and he never got a fair hearing and the tax was never authorized and the State of Illinois never acquired any right in that property because of the failure to comply with the jurisdictional facts and the mandatory requirement of due process of law secured to the taxpayer by the Fourteenth Amendment and the Bill of Rights of the Constitution of the State of Illinois.

Now, having learned that the Plaintiff's theory is that the tax is unauthorized in law, the Court refused to enforce its own pronouncement. That is, "The distinction there was where its an unauthorized tax, then the taxpayer need not follow his administrative remedy and administrative review is not the exclusive remedy he has." On the contrary, the Court ruled against the Plaintiffs maintaining that the tax is unauthorized in law by pronouncing, "The Illinois Supreme Court has spoken often about the complete encompassment of that administrative review remedy to accord taxpayer's full and complete relief. They need not bother with any common-law remedies, or other statutory remedies," and thus by refusing to apply the distinction he made himself that "*** where its an unauthorized tax, then the taxpayer need not follow his administrative remedy ***," the Court discriminated against the Plaintiffs-Appellants in the enforcement of the law allowing a taxpayer to proceed without following his administrative remedy where, as in the Plaintiffs-Appellants case, the tax is alleged to be unauthorized in law.

This discrimination by Judge Sarnow complained of, acting under color of his judgeship, is State action within the reach of the Fourteenth Amendment Equal Protection Clause securing the Plaintiffs-Appellants against such discrimination in the enforcement of the law, and, therefore, the conduct complained of is within the reach of Title 42 U.S.C. Section 1983 now invoked

The Taxpayer brought the attention of the Appellate Court to points VIII and XI in his brief.

Point VIII on page 28 of the Taxpayer's brief presented to the Appellate Court reads:

> Statutory provisions for notice and hearing are mandatory and jurisdictional. A compliance with them in all essential particulars is a condition precedent to an assment authorized in law. "Hearing" means a fair hearing guaranteed not only by statutory provision but by the due process clause of the Fourteenth Amendment of the Constitution of the United States and Article I, Section 2 of the Constitution of the State of Illinois.
>
> (Rec. C. 323) "Notice to the property owner and an opportunity to be heard are jurisdictional; they must precede any change or reassessment. (Lindheimer v. Nelson, 369 Ill. 313, 316, 16 N.E. 2d 734.) An assessment without notice and hearing is invalid. People ex rel Edgar v. National Box Co., 248 Ill. 141, 93 N.E. 778.
>
> Goodfriend v. Board of Appeals, 1973, 18 Ill. App. 3d 412, 305 N.E. 2d 404, 414.
>
> (Rec. C. 321) "Due process presupposes that the hearing shall be fair and impartial before a fair and impartial tribunal exercising honest judgment."
>
> Smith v. Department of Registration & Ed. 1952, 107 N.E. 2d 722, 412 Ill. 332.

Point XI on page 31 of the Taxpayer's Brief presented to the Appellate Court reads:

> Plaintiff-Citizen-Taxpayers have the inherent and inalienable right, protected by the Bill of Rights of the Constitution of Illinois; Article I, Section 1 and Article I Section 2, Due Process and Equal Protection, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment, to challenge the assessment proceedings before the Deputy-Assessor and the Board of Appeals for lack of jurisdiction for failure to comply with mandatory and jurisdictional requirement of a fair hearing to the Taxpayer as a condition precedent to an assessment authorized in law, and to assert that the hearings conducted were manifestly unfair and void and constituted an unconstitutional taking of property. The Illinois Statutory Remedy, making no provision for real estate not subject to taxation, cannot be used as a legal device to compel the Taxpayer to waive his constitutional claim of jurisdictional defects in the assessment proceedings.

Federal questions, raised before the Appellate Court in the Taxpayer's Brief and completely ignored and disregarded by the said Court by Points VIII and XI, are hereby expressly and specially set up and claimed under the Constitution of the United States and preserved before the Supreme Court of the United States where the principles of law are sought enfor-

cement.

Fursuant to Title 28 U.S.C. Section 1257 (3), Title 42 U.S.C. Section 1983, and Title 28 U. S. C. Section 1343 (3) specially setting up and claiming the protections provided by the Due Process and Equal Protection Clauses of the Constitution of the United States, the Taxpayer, FRANK G. DOSS, et al., Petitioners, affirmatively claims, through the judicial power vested in this Honorable Court as the Supreme Law of the Land, the right to the vindication by this Court of the rule of substantive law set forth by Mr. Justice Strong in Ex parte Virginia, 100 U.S. 339, 348, 25 L.Ed. 676, 680 (1880) as the rule of law whose enforcement is sought relates to the alleged discriminatory conduct of Judge Sarnow described in the Taxpayer's Civil Rights Remedy against him:

> We do not perceive how holding an office under a State, and claiming to act for the State, can relieve the holder from obligation to obey the Constitution of the United States, or take away the power of Congress

> to punish his disobedience.
>
> It was insisted during the argument on behalf of the petitioner that Congress cannot punish a State judge for his official acts; and it was assumed that Judge Cole, in selecting the jury as he did, was performing a judicial act. This assumption cannot be admitted. Whether the act done by him was judicial or not is to be determined by its character, and not by the character of the agent. Whether he was a county judge or not is of no importance.

Furthermore, in his Civil Rights Complaint, the Taxpayer, FRANK G. DOSS, et al., Petitioners, still proceeding under the Acts of Congress hereinbefore set forth and claiming the protection of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States, seeks redress for the wrongful application of the Statutory Remedy to a set of facts to which it has no lawful application because, on its face, it is inadequate as a means of providing jurisdiction over constitutional and statutory challenges made by the Taxpayer to jurisdictional defects in the assessment proceedings caused by the

alleged ultra vires and wrongful conduct of the assessment officers complained of found by Judge Brussell to exist when he ordered them to answer; that is, the assertion and affirmative claim of the right to challenge the validity of the assessment, something which, under Hagar v. Reclamation District No. 108, 111 U.S. 701 at 711, "The assessment under consideration could, by the laws of California, be enforced by legal proceedings, and in them any defense going either to the validity or amount could be pleaded," the Taxpayer has a perfect federal right to do.

Still proceeding as before and claiming the protections provided by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States, the Taxpayer, FRANK G. DOSS, et al., Petitioners, affirmatively claims the right to the vindication of the rule of substantive law set

forth by Mr. Justice Brewer, speaking for the Supreme Court in Reagan v. Farmers Loan, etc., 154 U.S. 362, 390, 391 (1893), 14 S. Ct. 1047, 1051, 1052, wherein he condemned the wrongful administration of a valid statute, being a rule of substantive law whose enforcement is sought by the Taxpayer as it applies to the alleged discriminatory action taken by Judge Sarnow against the Taxpayer:

> Neither will the constitutionality of the staututе, if that be conceded, avail to oust the Federal court of jurisdiction. A valid law may be wrongfully administered by officers of the State, and so as to make such administration an illegal burden and exaction upon the individual. A tax law, as it leaves the legislative hands, may not be obnoxious to any challenge and yet the officers charged with the administration of that valid tax law may so act under it in the matter of assessment or collection as to work an illegal trespass upon the property rights of the individual. They may go beyond the powers thereby conferred, and when they do so the fact that they are assuming to act under a valid law will not oust the courts of jurisdiction to restrain their excessive and illegal acts. In Cunningham v. Macon & Brunswick Railroad, 109 U.S. 446, 452, it was said:

"Another class of cases is where an individual is sued in tort for some act injurious to another in regard to person or property, to which his defence is that he acted under the orders of the government.

"IN these cases he is not sued as, or because he is, the officer of the government, but as an individual, and the court is not ousted of jurisdiction because he asserts authority as such officer. To make out his fedence he must show that his authority was sufficient in law to protect him. (Citing cases.)"

Proceeding pursuant to Title 28 U.S.C. Sec. 1257 (3), Title 42 U.S.C. Section 1983, and Title 28 U.S. C. Sec. 1343 (3) and specially setting up and claiming the protection of the Due Process and Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, the Taxpayer-Petitioner, FRANK G. DOSS, et al., objects that the empowering statutes are unconstitutional because they lack standards on their face to govern the scope of discretion conferred upon the Assessor and the Board of Appeals of Cook County, Illinois. The Taxpayer-Petitionerfurther objects that the

Statutory Remedy, in adequate to cover the challenges made to the validity of the assessment, is being used here unlawfully and unconstitutionally as a legal instrument to block, to defeat, and to bar the Taxpayer-Petitioner from pursuing his State and Federal Tort Action against the county assessment officers for their alleged wrongful conduct. By this illegal and unconstitutional blocking method, the Illinois courts, with the exception of Judge Brussell, have successfully and intentionally deprived and denied the Taxpayer-Petitioner of his federal right to challenge the validity of the assessment proceedings before the Deputy-Assessor and the Commissioners of the Board of Appeals for lack of evidence to support their exercise of the taxing power and the lack of standards in the empowering statutes--both grounds being legally sufficient to deprive them from acquiring the statutory authority to exercise the taxing power.

Under the heading, "Specifications of Relief sought," the Taxpayer-Petitioner made his legal position perfectly clear in his Notice of Appeal set forth in his Brief presented to the appellate Court on pages 5-9. The Taxpayer-Petitioner also made it clear in the Notice he wanted his money back for the real estate taxes paid involuntarily for the year 1974, even though the Opinion of Mr. Justice Hartman states that the taxes for the year 1974 were unpaid. The Taxpayer-Petitioner asserted his federal claims throughout the entirety of his Brief presented to the Appellate Court. The federal questions presented to the Appellate Court are hereby renewed and preserved through this Petition for Certiorari. These claims are presented here and now on the grounds that the United States Supreme Court is the only federal court available to rule on them following the application of the Pullman abstention Doctrine by the Seventh Circuit. Under the authority of N.A.A.C.P.

v. Button, 371 U.S. 415, 427, 428 (1962), the Taxpayer-Petitioner has the federal right to presente there questions to this Court now for adjudication. The right is protected by Amendment V of the Constitution of the United States, "No person shall *** be deprived of life, liberty, or property without due process of law ****."

The Taxpayer-Petitioner objects: Where the totality of the authority to exercise the taxing power is "surrendered" over to the Asssessor and the Board of Appeals of Cook County, Illinois under the surrendering phrase " *** as shall appear just ***," by the Illinois General Assembly in direct violation of Article IX, Section 1 of the Illinois Constitution prohibiting surrender, then every assessment made by the Assessor and revised by the Board of Appeals is within the scope of discretion conferred. They have as a matter of law "the full ball of wax" to use the taxing power ex-

clusively vested in the legislature as they see fit to exercise it. Does this amount in law to the delegation of totalitarian power from the legislative branch over to the executive branch in direct violation of the separation of powers mandate declared in Article II Section 1 of the Illinois Constitution prohibiting one branch of the government from exercising power properly belonging to another? If this be not a violation of Article II, then what, if anything, is? By this illegal and unconstitutional means, well beyond the limitations placed upon the legislative authority granted to them by the People of the State of Illinois in the Illinois Constitution, the Illinois General Assembly has legislatively endowed the Assessor and the Board of Appeals with unlimited and unbridled authority to exercise the taxing power under a constitutional form of government purportedly subjecting public officials to constitutional limitations that the courts are duty bound by law to enforce

and duty bound to protect the substance and form of individual rights.

By depositing arbitrary authority to use the taxing power "*** as shall appear just ***," in the Assessor and the Board of Appeals, the Illinois General Assembly has invaded the prohibitions of the Fourteenth Amendment substantive requirement of the Due Process Clause of the Constitution of the United States forbidding a State from clothing a public officer with arbitrary power over the life, liberty, or property of an inhabitant.

Part B of the Notice of Appeal, attacking the Statutory Remedy in its application, asserts the existence of a federal question now renewed and preserved in which Commentators Ganz and Laswell are concededly authorities by reason of their exhaustive research on the Illinois Constructive Fraud Doctrine. This point has been touched upon earlier, but a market value assess-

ment, based upon Article IX of the Illinois Constitution using the term "Valuation" and based upon the Cook County Classification Ordinance of a market value assessment is precisely what the Cook County, Illinois taxpayer does not get when he uses the Statutory Remedy. To the extent that the Remedy is successfully palmed off to the federal courts as adequate to provide the taxpayer relief specified and prescribed by the mandate of Article IX of the Illinois Constitution that the taxing power shall be applied according to "valuation", it is a hoax. The burden is unconstitutionally thrust upon the taxpayer to prove "constructive fraud." By means of the conclusive presumption, applied in the Statutory Remedy proceedings, that the assessment officers have fully and faithfully discharged their duties against the taxpayer, the taxpayer is prevented by judicial action from establishing jurisdictional defects and procedural deficiencies in the assessment proceedings arising from the invasion by the taxing officers of the statutory and constitutional safeguards protecting the taxpayer.

The interesting question arises: Even though the Taxpayer-Petitioner has proceeded under Title 28 U.S. C. Sec. 1257 (3), Title 42 U. S.C. Section 1983, and Title 28 U.S.C. Sec. 1343 (3) and the authority of N.A.A.C.P. v. Button, 371 U.S. 415, 426, 427 (1962) that the Petitioner-Taxpayer has a right now to present his claims to this Court for adjudication, yet can this Court, under Article III, Section 2 of the Constitution of the United States and Article VI, Paragraph 2, exert federal judicial power upon the Assessor, the Deputy-Assessor, the Commissioners of the Board of Appeals, Judge Sarnow, and Justices Hartmen, Downing, and Perlin of the Appellate Court under Title 42 U.S.C. Sec. 1983 and Title 18 U.S.C. Sec. 242? That is, simply in order to enforce the rights of an inhabitant to the protection of his property

arising under the Constitution from arbitrary and unauthorized conduct of State instrumentalities, acting under color of their office and stripped of their official and representative character and answerable to the Taxpayer-Petitioner as ordinary individuals? This is a touchy question and the answer is: Yes.

. . . .

The question of whether the County officer respondents and the judges designated are responsible for obedience to the inhibitions of the Fourteenth Amendment is controlled by the statements made by Mr. Justice Peckham, speaking for the Supreme Court, in Raymond v. Chicago Union Traction Co., 207 U.S. 20, 35, 36, 28 S. Ct. 7, 12 (1907) as follows:

> The state board of equalization is one of the instrumentalities provided by the state for the purpose of raising the public revenue by way of taxation ***. Acting under the Constitution and laws of the state, the board therefore represents the state, and its action is the action of the state. The provisions of the fourteenth amendment are not confined to the action of the state through its legislature, or through the executive or judicial authority. Those provisions relate to and

> cover all the instrumentalities by which the state acts; and so it has been held that whoever, by virtue of public position under a state government, deprives another of any right protected by that amendment against deprivation by the state, violates the constitutional inhibition; and as he acts in the name of the state and for the state and is clothed with the state's powers, his act is that of the state.

Mr. Justice Hughes, when he spoke for the Supreme Court in Philadelphia Co. v. Stimson, 223 U.S. 605, 621, 622, 32 S. Ct. 340, 345 (1911), made it clear that, where a state officer acts under an unconstitutional statute, or acting under a valid statute transcends its bounds, then the officer is guilty of an invasion of the private property of the individual in the following language of the Court:

> Where the officer is proceeding under an unconstitutional act, its invalidity suffices to show that he is without authority, and it is this absence of lawful power and his abuse of authority in imposing or enforcing in the name of the State unwarrantable exactions or restrictions, to the irreparable loss of the complainant, which is the basis of the decree. Ex parte Young, 209 U.S. p. 159. And a similar injury may be inflicted, and there may

> exist ground for equitable relief, when an officer, insisting that he has the warrant of the statute, is transcending its bounds, and thus unlawfully assuming to exercise the power of government against the individual owner, is guilty of an invasion of private property.

Mr. Justice Peckham, in the leading case of Ex parte Young, 209 U.S. 123, 159, 160, 28 S. Ct. 441, 457 (1908) speaking for the Supreme Court, also made it clear that, where state officers act under unconstitutional statutes or transcend the bounds of a valid statute, then the state cannot impart immunity to the state officers for their conduct unauthorized in law and, for such unauthorized conduct, they are liable to the individual property owner in trespass, being stripped of their official and representative character as officers of the state.

> The answer to all this is the same as made in every casewhere an official claims to be acting under the authority of the State. The act to be enforced is alleged to be unconstitutional, and if it be so, the use of the name of the State to enforce an unconstitutional act to the injury of complainants is a proceedings without the authority

> of and one which does not affect the State in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting to use the name of the State to enforce a legislative enactment which is void because unconstitutional. If the act which the state Attorney General seeks to enforce be a violation of the Federal Constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States. See In re Ayers, supra, page 507.

Taking into consideration the foregoing law and the set of facts alleged in the body of the Brief before the Appellate Court and the argument presented to the said Court, the question arises: Was the Order of Judge Brussell that the County-officer Respondents Answer for their alleged wrongful conduct based upon legally sufficient facts to establish that the Respondents, in exercising the taxing authority, had used this power arbitrarily upon the Petitioner-Taxpayer?

Did the county officers invade one or more of the legally protected interests of the Petitioner-Taxpayer? Did they invade the Petitioner-Taxpayer's constitutional right, under Article IX of the Illinois Constitution, to an assessment based upon the valuation of his real property? Did they invade the Petitioner-Taxpayer's right under the Cook County Real Property Assessment Classification Ordinance to an assessment based upon and revised according to the market value of his property? Did they invade the Petitioner-Taxpayer's right, secured to the Taxpayer under the empowering statutes by the "opportunity to be heard" provisions therein contained, to a fair hearing before the assessment officers based upon the evidence presented at the proceedings as a mandatory and jurisdictional fact precedent to an assessment authorized in law? (See: Goodfriend v. the Board of Appeals of Cook County, 18 Ill. App. 3d 412, 305 N.E. 2d 404 at 414: "Notice to the property owner and an opportunity to be heard are jurisdictional ***.") Did they invade the Taxpayer-Petitioner's right under the substantive provision of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States to freedom from the exercise upon the Taxpayer or his property of arbitrary power by the assessment officers? Did they invade the Due Process right of the Taxpayer to a fundamentally fair hearing?

The Petitioner-Taxpayer, pursuant to Title 28 U.S.C. Sec. 1257 (3), hereby specially sets up and claims under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States that:

I. The constitutional right to an assessment based upon valuation of the Petitioner's real estate under Article IX, Section 4, namely, "*** taxes upon real property shall be levied uniformly by valuation ***," is a right secured

the Taxpayer-Petitioner by the Constitution of the United States under the Equal Protection Clause of the Fourteenth Amendment, guaranteeing and securing to the Petitioner-Taxpayer equal treatment before the law and an immunity from discrimination in the enforcement of the law.

2. Likewise, and on the same grounds as set forth in Paragraph 1, the Taxpayer-Petitioner asserts his right to an assessment based upon the market value of his property and to a revision based upon market value under the Cook County Real Property Assessment Classification Ordinance is a right protected by the Equal Protection Clause.

3. Likewise, and on the same grounds as set forth in Paragraph 1, the Petitioner-Taxpayer asserts that his right to a fair hearing based upon the evidence presented at the proceedings under the "opportunity to be heard" provisions of the empowering statutes is a right

secured by the Equal Protection Clause.

4. The Petitioner-Taxpayer hereby sets up and specially claims that he has the right under the substantive provision of the Due Process Clause of the Fourteenth Amendment to a fair hearing before the assessment officers based upon the evidence presented as a condition precedent to an assessment authorized in law. Also, under the same provision, the Taxpayer-Petitioner claims his right to freedom from the exercise upon him or his property of arbitrary conduct by the County-officer Respondents.

Furthermore, the Petitioner-Taxpayer, proceeding pursuant to Title 28 U.S.C. Sec. 1257 (3), specially sets up and claims under the Due Process and Equal Protection Clauses of the Fourteenth Amendment that the County-officer Respondents knowingly, intentionally, and willfully invaded one or more of the rights set up and claimed immediately before under Paragra-

graphs 1, 2, 3, and 4 by the omission of the Deputy-Assessor to consider the Taxpayer's competent evidence of value of the subject real estate, and the omission of the Commissioners of the Board of Appeals to consider the Taxpayer's competent evidence of value of his real estate as required by law, and to revise the assessment based upon the evidence of market value presented at the proceedings--all matters hereinbefore complained of being in direct violation of and forbidden by:

> Title 42 U.S.C. Sec. 1983. Civil Action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
>
> Title 28 U.S.C. Section 1343 (3). The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

> (3) To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction.
>
> Title 18 U.S.C. Section 242 Deprivation of rights under color of law. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, of District to the deprivation of any rights, privileges, or immunities secured and protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years of for life.

By virtue of the invasion of the County-officer Respondents to the rights specially set up and claimed by the Petitioner-Taxpayer through Title 28 U.S.C. Section 1257 (3) and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, the said County-officers now stand before the law and before this Court

stripped of their official and representative character and are answerable for their alleged wrongful conduct in the State and Federal action at law of trespass to real property for their conduct unjustified, unprivileged, and unauthorized in law and beyond their authority under the empowering statutes. By reason of their acts and omissions to act where the law imposes a duty, the County-officers have illegally and unconstitutionally trespassed upon the fundamental rights of the property of the Petitioner-Taxpayer.

The details of the acts and omissions complained of, taken from pages 42 to 57 of the Appellate Court Brief, are set forth as follows:

> Point V. Commissioner Zaban has no authority whatsoever granted him by the mandate of the Cook County Classification Ordinance to review assessments based upon the budgetary needs of the police and firemen because budgetary requirements have nothing to do with assessing real estate so that his conduct is unauthorized in law.
>
> "Sec. 3. The Assessor shall assess, and the Board of Appeals shall review assessments

> on real estate in the various classes at the following percentages of market value: *** Class 3 - 33%"
>
> Real Property Assessment Classification Ordinance, Approved by Board of County Commissioners Dec. 17, 1973. Applicable to assessments for tax assessment year 1974 and for subsequent tax assessment years.
>
> "Budgetary requirements have nothing to do with assessing real estate. It is a vice to associate them; just a scheme of loading down real estate with more than its share."
>
> People v. Cook, 1940, 18 N.Y.S. 2d 965, 979, aff'd 261 AD 993, 27 N.Y.S. 2d 999.

Commissioner Zaban of the Board of Appeals had a duty enjoined upon him by "*** the Board of Appeals shall review assessments on real estate in the various classes at the following percentages of market value ***," and obedience to the Ordinance is mandated by Article VII, Section 4 of the Constitution of the State of Illinois in force July 1, 1971, that is, "County officers shall have those duties, powers, and functions provided by law and those provided by county ordinance."

The Plaintiffs, therefore, have the right, both substantive and primary, and the Board of Appeals has the correlative duty by Ordinance to review assessments on Plaintiffs' real estate at fixed percentages of market value under Class 3 of the Ordinance. The Board of Appeals has no privilege in law to review assessments and then, following the review, allow assessments at more than double market value

to stand where, as here, the Taxpayer duly and properly asserted his right to an assessment based upon the actual cash value of the real estate, a right secured and guaranteed by the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States and Equal Protection Clause of the Bill of Rights of the Constitution of the State of Illinois, and Article I, Section 2, and Article IX, Section 4 of the Illinois Constitution, that is, "*** taxes upon real property shall be levied uniformly by valuation ***,"--all protecting the Plaintiffs from refusal by the Board to grant relief in compliance with the requirement of the Ordinance to review assessments at a fixed percentage of market value.

The fact that the Board granted relief from the $60,000 market value assessment set by the Assessor and reduced the assessment down to $45,000 is not controlling where the evidence established the market value to be $20,000, the Board, under ther terms of the empowering statute, Section 597 of the Illinois Revised Statutes, has a duty to revise assessments annually. Where the Taxpayer bought the real property in an arm's length transaction for $3,500 when it was assessed at over $60,000, that is, 17.14 times the market value, and the building was being operated after the payment of real estate taxes at a loss of approximately $1,800, then the Plaintiffs are entitled to the full measure of what the law allows and cannot be compelled to settle for less. They have a perfect right to seek further relief from the Board.

The Board of Appeals Complaint Complaint Number 11484 for the year 1974 sets out: "(1) Purchase Price of $3,500; (2) sale of 1/2 interest for $9,250; bona fide appraisal of $17,500. 1974 Income $15,783.00 less expenses of $15,720.37. Operating income $63.51 less $1,900 R/E tax making tax complained of confiscatory loss on Bldg. of $1,836.49"

Consequently, the evidence submitted supported the Plaintiffs' claim for a reduction from $45,000 to $20,000, the actual cash value or market value of the building. The Board breached the Plaintiffs' substantive right to a market value assessment under the mandate of the Ordinance, an act of the County Board that the Board of Appeals is under duty by the Constitution of the State of Illinois to obey.

According to the transcript alleged of February 26, 1975 the following took place:

MR. ZABAN: "We have been studying your request for lower taxes. I don't want to sound confiscatory, but we have not come up with any justifiable way to give you relief."

MR. BUTTON: "Your Honor, we have presented documents proving from sale and appraisal that the actual cash value is no more than $20,000.

MR. ZABAN: "We cannot pay our police and firemen on that basis. We had a value on this property at $60,000 and we gave you a substantial cut the last time and that is all we can do."

MR. BUTTON: "If the value is not $20,000, what is the value?

MR. ZABAN: "For tax purposes we placed that value at $45,000. Maybe I should not have said that but I did and I will stick with it. I do not want to do anything that will hurt you in court."

Where Commissioner Zaban is under a duty by Ordinance to review assessments at market value and the evidence presented supported a finding of $20,000 market value, then where does he obtain authority not granted him under the Ordinance to set the assessment at $45,000 for tax purposes in order to pay the police and the firemen?

Under the law and the facts, he had no right whatsoever, he has no authority whatsoever, and he has no legal privilege whatsoever to review assessments above market value criterion mandated by the Cook County Classification Ordinance. On the contrary, he has a duty owed the Plaintiffs to review the assessment based upon the market value standard. Correlatively, the Plaintiffs have a substantive and primary right to have the assessment on the subject real estate set at market value. When he made the alleged statement, "We cannot pay our police and firemen on that basis," Commissioner Zaban breached the Plaintiffs' right to an assessment reviewed by the Board of Appeals based upon the market value of the real estate involved.

for the conduct objected to, unprivileged and unauthorized in law, the Statutory Remedy, Section 194 of the Revenue Act of 1939 (Chapter 120, par. 675 of the Illinois Revised Statutes) has absolutely no reach, extent, or application because the real estate is not subject to taxation as provided for on the face of the statute. The Board of Appeals

usurped authority not granted to them by Ordinance, and, therefore, the entire proceedings is coram non judice.

The defense of the Commissioners by the Office of the States Attorney confers upon the Board no legal privileges. If the Office of the States Attorney enforced the market value standard of assessment required by the Ordinance for the benefit of the taxpaying public against the County officers, then the whole Illinois system of constructively fraudulent assessments would collapse. There would be no further need for the statutory remedy because the remedy would no longer be fed and nourished by constructively fraudulent assessments provided by the Board of Appeals.

The unauthorized tax lien stands as an invasion of Plaintiffs fundamental right to possession of their real property to be free from the imposition of an unauthorized tax lien. The common law tort action of trespass to land is the proper action to bring to vindicate a disputed right. The Federal Civil Rights remedy, supplementary to the State remedy, is the proper action to bring to seek redress for the deprivation of a substantive right of Plaintiffs to an assessment based upon market value by the Board of Appeals acting under color of their office, and the deprivation of the procedural right to a fair hearing as a jurisdictional condition precedent to an assessment authorized in law.

Page 47 Point VI.--Where the Cook County Classification Ordinance enjoins a duty upon the Board of Appeals: "***the Board of Appeals

shall review assessments on real estate in the various classes at the following percentages of market value ***," then the alleged statement of Commissioner Semrow, "Forget that actual cash value stuff," coupled with his nonfeasance and breach of duty to review the assessment according to the evidence presented establishing the market value at $20,000 but allowing the assessment to stand at $45,000 places him as a direct violator of the very ordinance he is under duty to enforce and to apply so that his conduct is unauthorized in law.

The legal position of Plaintiffs is that the assessment complained of for the year 1974 on the subject real property was reviewed by the Board of Appeals improperly using the gross income of $15,836.49 without giving the Plaintiffs proper credit for the legitimate expenses connected with the operation of the building in order to generate the gross income, and without considering that, after the payment of real estate taxes, the rate of return on the investment was a loss of $1,836.49; that the Board of Appeals usurped authority not granted by the Cook County Classification Ordinance by more than doubling the market value of the real estate for tax purposes; and that the Board denied the Plaintiffs a fair hearing as a constitutional due process guarantee of the Fourteenth Amendment of the United States Constitution and the due process clause of Article I, Section 2 of the Constitution of the State of Illinois, and denied the Plaintiffs the equal protection of the law of both State and Federal Constitutions by refusing to enforce the Cook County Classification Ordinance of an assessment based upon market value of the real estate and violated Article IX, Section 4 of the Illinois Constitution requiring that assessments be set uniformly by valuation. The purchase of the real estate was a high risk speculative investment so that an investor could reasonably expect a rate of return on the investment of between fifteen to twenty percent. The return of fifteen percent on a $45,000 investment would amount to $6,750, yet the building valued at $45,000 for tax purposes returned a loss of $1,836.49. Plaintiffs did not buy the building to lose money on it. Prima facie the assessment officials had the building wrongfully assessed at 460,000 when the Plaintiff, Mr. Doss, bought the building for $3,500, and it was still wrongfully assessed after relief had been given from $60,000 down to $45,000.

According to the Cook County Real Property appraisal of 1973 put out by the Cook County Assessor's Office, Special Commercial Section, Apartments, Rental Residential, p. 2, reads as follows: "Income Approach. Apartment buildings regardless of their type are built, bought, and sold as an investment or income-producing property. The appraisal of apartments follows the same procedures discussed in the sections of the Manual dealing with the Capitalization of Income Approach to value. The basic procedure is 1) the collection and analysis of income and expense data in order to determine the net return; and 2) the capitalization of net income into an indication of value, generally by using either the Building or Land Residual Technique." (Zerox in the appendix.)

According to the Wilson Case, the assessment officials have enjoined upon them the duty to assess and review assessments according to the recognized elements of value.

With this background then, the statements

allegedly made by Commissioner Semrow can be viewed in their proper context and legal significance. When Commissioner Semrow interposed in the proceedings before Commissioner Zaban with the alleged remark, "What is the difference between the income on the property this year and last year?"

MR. DOSS: "The income is about the same."

MR. SEMROW: "Then why are you asking for lower taxes again this year?"

The Commissioner carefully avoided bringing up the item of expenses connected with the building because the Board does not consider that factor. The full legal significance of the question may not be recognized by anyone unfamiliar with the practice of the Board of Appeals of basing the market value of the Taxpayer's real estate upon the gross rent multiple (GRM). Under the GRM system of assessment the gross rent is taken and multiplied by any multiplier that suits the whim and fancy of the Assessor and the Board of Appeals. The Taxpayer has no access to the means by which the formula is arrived at and no way of counteracting its harmful effects; that is, an assessment of one hundred twenty-five percent above market value ($45,000 minus $20,000 is $25,000. $25,000 divided by $20,000 is one hundred twenty-five percent.)

The Motion then before the Board of Appeals is set out in full, not only to establish that the GRM method of assessing real estate where it has no relation to the actuam market value selling price of the real property is an unauthorized exercise of authority by both the Assessor and the Board of Appeals not granted by the Cook County Classification Ordinance; but also to establish that the

Plaintiffs at that time and place asserted their constitutional guarantees of Due Process and Equal Protection under the Fourteenth Amendment of the Constitution of the United States and the Board ruled and passed upon the federal question properly raised and set forth in the Statement of Facts.

Page 51 Point VII.--Where the Assessor is duty bound by the Cook County Classification ordinance: "The Assessor shall assess *** at the following classes of market value," then the Taxpayer has the right to rely upon the use by the Assessor of 1) the legally recognized elements of value in determining the market value and 2) the assessment procedures set forth in the Assessor's Manual of 1973 requiring that the Assessor provide proper allowances for operating expenses required to generate building income. The Assessor has no right to use a rule of thumb formula of the gross rent multiple for setting assessments at market value making no allowance for the location factor or deductions for expenses of the building in order to more than double the market value so that the assessment is one unauthorized in law.

It is of legal significance that the Taxpayer bought the building for $3,500 when the Assessor had it assessed at over $60,000 or 17.14 times the market value.

The purpose of the proceedings before the Deputy-Assessor, Mr. Patrick Doody, was to bring the assessment then set at $45,000 down to reality, reality being the actual cash value of the building set at $20,000.

The Taxpayer failed in his purpose and the question arises: In the proceedings did the Deputy-Assessor violate any legally protected interests of the Taxpayer?

Under the Due Process Clause of the Fourteenth Amendment and Article I Section 2 of the Constitution of the State of Illinois, the Plaintiffs-Appellants in the hearing before the Deputy-Assessor have the right not only to notice and an opportunity to be heard, but to be heard before a fair and impartial tribunal exercising honest judgment upon the evidence presented at the hearing as a condition precedent to an assessment authorized in law. "Notice" means that the Taxpayer shall be informed of the means and methods used in determining the amount of the assessment and secret formulas, used by the Assessor and the Board of Appeals to determine value of real estate for tax purposes that bear no relation to the actual cash value of the real estate, are illegal to use. By their use the Assessor and the Board of Appeals become usurpers of authority to assess and to review assessments on real estate not granted to them by the Cook County Classification Ordinance. The improper usurpation of authority in order to more than double the tax assessment above market value confers no authority in law upon either the Assessor or the Board of Appeals. Where, as here, they act without authority, then they have no legal privileges to rely upon in the exercise of improper authority against the fundamental personal and property rights of the citizen-taxpayer to the protection of his real estate against assessments unauthorized in law.

The Cook County Classification Ordinance requires that the Assessor shall assess and the Board of Appeals review assessments at

market value. Article IX, Section 4 of the Constitution of the State of Illinois requires "***taxes upon real property shall be levied uniformly by valuation," and the Equal Protection Clause of the Fourteenth Amendment and Article I Section 2 of the Constitution of the State of Illinois all stand guaranteed as constitutional remedial rights protecting the Plaintiffs in the enforcement of a market value assessment. The Assessor and the Deputy-Assessor are both chargeable with knowledge of the language in the Assessor's Manual of 1973 that in computing market value under the income approach "*** The basic procedure is 1) the collection and analysis of income and expense data in order to determine net return; ***."

The question arises: Under the facts alleged, did the Deputy-Assessor follow the basic procedure of analysis of income and expense data as required by the Assessor's Manual? Or, did he only consider income and completely disregard the expense data connected with the operation of the building in order to generate gross income? By refusing to consider the legitimate items of expense but by applying a secret formula of his own--did he then and there more than double the market value of Plaintiffs' real estate for tax purposes? Was the more than doubling the market value of the real estate for tax purposes a violation of the Cook County Classification Ordinance that the Assessor shall assess at a fixed percentage of market value? If the use of the gross rent multiple of three to arrive at the assessment resulting in an assessment set at more than double market value was a violation of the Cook County Classification Ordinance, was it also not an act unauthorized in law? If the act was unauthorized

in law, then are the Plaintiffs required to follow the statutory remedy or can they sue the assessment officials directly in tort for their unauthorized acts, in direct violation of the Taxpayer's personan and fundamental property rights?

If others are assessed at market value according to the requirements of the Cook County Classification Ordinance but Plaintiffs-Appellants are assessed at more than double market value--have the Deputy-Assessor and pro hac vice the Assessor discriminated against the Plaintiffs in direct violation of State and Federal equal protection of the law guarantees and in direct violation of Article IX, Section 4 of the Illinois Constitution requiring that taxes shall be levied uniformly by valuation? Have they by refusing to consider the item of expenses in connection with the operation of the building given only lip-service to their own Assessor's Manual of 1973 requiring that the Taxpayer be given proper credit for such expenses?

The material facts before the Deputy-Assessor, Mr. Patrick Doody, at the hearing on the Plaintiffs Complaint may be briefly summarized as follows:

Plaintiff, Mr. Frank G. Doss, bought the three story brick six-flat converted into apartments at 1555-57 E. 61st Street, Chicago, Illinois in 1971 for the sum of $3,500 at a time when it was assessed by the Assessor at more than $60,000. The building was in a run-down condition subject to building violations, and a target for vandalism. The Board of Appeals, prior to 1974, had reduced the market value from $60,000 down to $45,000. Mr. Doss had also sold a one-half interest

in the property for $9,250. The total value then became $18,500.

On December 11, 1974 Plaintiff, Mr. Frank G. Doss, having filed his Complaint before the Assessor pursuant to statute provided, appeared before Mr. Patrick Doody, Assessment-Examiner, with his appraiser, bookkeeper, owner of 1/4 interest in the property, and attorney seeking to have the 445,000 assessment reduced to $20,000 to keep the assessment in line with the market value of the property. The appraiser had set the market value at $17,500. The building generated more than $15,000 gross income from rentals, but the expenses connected with the building because of its location in a blight area were so high that, after payment of real estate taxes, the building was a money loser.

Mr. Doody took the gross income rent figure of approximately $15,000 multiplied it by three and determined that the market value of the building was $45,000. The attorney for Mr. Doss immediately objected to this method of figuring market value and pointed out that the sale of the 1/2 interest established the fair cash value of the building at $18,500. The Deputy-Assessor then said it was too late to bring that point up because there was no mention made of it in the supporting data.

The Taxpayer's attorney then asked permission to examine the supporting data, and, after thumbing through it, pointed out to Mr. Doody that evidence of the sale was in the supporting data and it was not too late to bring the point up.

Mr. Doody then said the transaction was not bona fide and he was free to disregard it.

The operative facts of legal significance arising from the hearing complained of are:

1. The Deputy-Assessor in taking the gross rent figure never allowed the Taxpayer the proper deductions from gross rent income for his legitimate operating expenses indicating that the building, after the payment of real estate taxes, was operated at a substantial loss.

2. The Assessor's Manual of 1973 requires that in the income approach to value that the operating expenses be considered to arrive at net income on the investment. Mr. Doody ignored this requirement completely.

3. The Deputy-Assessor had not read the supporting data or he would have known that the evidence of the sale of the one half interest of the real estate was in there.

4. That he used the dodge of it was too late to bring up the sale of the one half interest and, when that failed, refused to consider the evidence anyway on the ground that the sale was not a bona fide one.

5. That he refused to give any weight whatsoever to the appraiser's report setting the market value at $17,500.

6. That he refused to consider that the building was bought for $3,500 when his office had it assessed at over $60,000.

7. That the secret formula he used had no relation to the evidence of market value presented at the hearing. That the Taxpayer had no means of knowing just how the Deputy-Assessor got his formula.

What reasonable inferences arise from this set of facts? Did the hearing conducted by Mr. Doody meet the standards of State and Federal Due process of law guarnateeing to the Taxpayer a fair hearing as a condition precedent to an assessment authorized in law?

Did the hearing as conducted by Mr. Doody discriminate against the Taxpayer by not assessing at market value as required by the Cook County Classification Ordinance?

Do the inexorable constitutional safeguards purportedly protecting the citizen-taxpayer from arbitrary conduct by public officers have any meaning and substance before the law or are these safeguards just so much empty noise?

The attention of this Honorable Court is directed to the fact that where the Appellate Court ruled in the first paragraph of its Opinion, "The underlying issue here, however, is whether the circuit court erred in granting a summary judgment to defendants on the ground that adjudication of the issues asserted by plaintiffs was barred by a prior judgment," the Court completely by-passed the issue of whether the circuit court erred in dismissing the Petitioner's "First Amended Federal Complaint" on the

grounds that the federal action was barred by the prior judgment. By giving the silent treatment to the Petitioner's "First Amended Federal Complaint" the Appellate Court affirmed the judgment of the circuit court dismissing it sub silento. The Petitioner specially sets up and claims, pursuant to Title 28 U.S.C. Sec. 1257 (3), that the Petitioner was improperly deprived and denied the full consideration of the issues contained in the federal complaint, secured by the Constitution of the United States, as these issues are barred from consideration by the prior judgment, and that the silent treatment, when the Court was under a duty to speak, was an omission repugnant to the Constitution of the United States and a direct violation of Title 28 U.S.C. Sec. 1983 and Title 18 U.S.C Sec. 242.

The holding of the Appellate Court that the prior judgment obtained by the County Collector is res judicata and, therefore, bars the

Petitioner-Taxpayer from suing the Assessor, the Deputy-Assessor, and the Commissioners of the Board of Appeals proceeds upon the tacit assumption that the Assessor, the Deputy, and the Commissioners have acted under the authority of the State of Illinois and within the permissible boundaries of the Fourteenth Amendment so that the judgment is final and bars the Taxpayer from suing the Assessment Officers in their individual capacities stripped of their official and representative character under a State common-law action of trespass and a Federal Civil Rights Remedy.

On the grounds of necessity for money to operate the State government, the State of Illinois may proceed to judgment upon the assessment under the immunity from suit granted the State by the Eleventh Amendment of the Constitution of the United States where it appears to be a valid assessment upon its face, even though in fact such an assessment was

obtained through illegal and unconstitutional practices taken by the assessment officials setting the law in motion without justification in law. Such a judgment obtained by this means can be enforced against the taxpayer and he may be compelled to pay it involuntarily as occurred in the present case.

Under such circumstances, what can a taxpayer do to protect his fundamental right of property from unauthorized State action? Where he has elected not to follow the statutory remedy, he must sue the assessment officials as individuals stripped of their official and representative character by using a nonstatutory remedy and in the suit establish that the assessment officers in one or more ways have not discharged a duty mandatory and jurisdictional to the assessment. Even where the real property assessment on non-exempt property in Cook County, Illinois is one unauthorized in law, yet such an assessment may well support a tax judgment. The existence of

of the tax judgment obtained by means unauthorized in law cannot be used to bar an action to establish that the judgment was obtained by means without the authority of the State of Illinois. And that is what is being done here. The tax judgment of Judge Comerford is being set up to bar the Petitioner's State action of trespass to property and to bar the Federal Civil Rights action seeking to establish that the assessment upon which that judgment rests was obtained from the Taxpayer by means without the authority of the State of Illinois behind it. Where the County-officer Respondents have used the taxing power without statutory authorization or without constitutional power from the State of Illinois, then they are stripped of their official and representative character and are answerable to the Petitioner-taxpayer as private individuals for their trespasses upon the Taxpayer's fundamental right of property made without the authority of the State of Illinois.

Neither the Government of the United States nor the State of Illinois can constitutionally deprive the Petitioner-Taxpayer, through unauthorized judicial claim preclusion, of his right to a full day in court to establish that the County-officers are presently functioning without the authority of the State of Illinois under unconstitutional empowering statutes without standards to govern the scope of discretion conferred, statutes that are hereby specially set up and claimed under Title 28 Section 1257 (3) to be repugnant to the substantive provision of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States protecting the inhabitant from the exercise upon him or his property of arbitrary State taxing power.

Nor can either Government constitutionally prohibit the Taxpayer-Petitioner from establishing in a nonstatutory remedy lawsuit that the County

officers did not fully and faithfully discharge their constitutional obligations under the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States. Nor can either Government constitutionally prohibit the Taxpayer-Petitioner from establishing that (1) the County-officers did not fulfill their obligations under the empowering statutes, (2) they did not fulfill their obligations under the Cook County Classification Ordinance, and (3) they did not fulfill their obligation under Article IX of the Illinois Constitution of applying the taxing power according to "valuation."

Respectfully requesting this Honorable Court to give full consideration to the foregoing analysis, the Petitioner-Taxpayer hereby and now rejects the tacit assumption made by Mr. Justice Hartman that the Petitioner is attacking the assessment as "excessive" subsuming that the assessment is authorized in law, and the

tacit assumption that the prior judgment of the County Collector, based upon an unauthorized, illegal, and unconstitutional tax assessment by the County assessment officers using the taxing power without evidence to support the exercise of that power and without the authority of the State of Illinois, bars the Petitioner-Taxpayer from challenging the constitutional and statutory authority of the County-officers to apply the taxing power. The legal position of the Taxpayer-Petitioner is that the County officers have acted without State authority under unconstitutional empowering statutes without governing standards upon their face and without State authority for failure to comply with the mandatory and jurisdictional prerequisites of the "opportunity to be heard" provisions of the empowering statutes by providing the Petitioner-Taxpayer a fair hearing based upon the evidence presented at that hearing. The conduct of the County-officers is deemed by the Petitioner-Taxpayer to

be repugnant to the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and the protections against the deprivation of property provided by Title 28 U.S.C. Section 1257 (3). This provision is now set up and claimed against the deprivation of Petitioner-Taxpayer's property by means unauthorized in law. The judges of the State of Illinois cannot impart immunity to the County-officers against suit for conduct creating an unauthorized tax lien upon the Petitioner- Taxers' real property. The judgment of sale, based upon an assessment created by conduct outside the authority of the State of Illinois, cannot be used to bar an action seeking to establish that the assessment is one unauthorized in law and without the authority of the State of Illinois.

The Petitioner-Taxpayer's lawsuit is a direct challenge to the constitutional and statutory authority of the County-officers to represent the State of Illinois in an official capacity; it is definitely

not an excessive valuation complaint to which the Statutory Remedy is exclusive; it never has been one; and the Opinion of Mr. Justice Hartman cannot be used to make it one.

The Statutory Remedy does not provide the Taxpayer with an opportunity to challenge the statutory and constitutional authority of the County-officers to act. This right of challenge is a valuable substantive right of the taxpayer. It cannot be deprived the taxpayer by forcing him to use the Statutory Remedy where the right is automatically denied and deprived the taxpayer. Where the taxpayer seeks to establish that the assessment against his property was obtained by means unauthorized in law and without the authority of the State of Illinois, then the judgment based upon the challenged assessment cannot be used to bar the challenge.

In order to establish that thePetitioner has raised the federal questions and preserved the issues, the Petitioner draws the attention of this Honorable Court to the matter contained in his "Petition for Rehearing Pursuant to Illinois Supreme Court Rule 367" presented to the Appellate Court on September 21, 1979 and denied on September 24, 1979.

Point One Taxpayer hereby and now invokes and objects: By means of this Petition for Rehearing Pursuant to Illinois Supreme Court Rule 367, FRANK G. DOSS, et al., hereby and now asserts and claims an an inhabitant and owner of real estate located at 1555-57 E. 61st Street, Chicago, Illinois, the protections guaranteed and secured him by the laws of the State of Illinois and of the United States. Hereinafter referred to as the Taxpayer complains that, through illegal and unconstitutional action taken by the Defendants against his real estate of assessing and reviewing the assessment on his real

estate for the year 1974 at $45,000 with no fact anywhere in the record to support the finding, the Taxpayer has been deprived of a legally protected interest in his property by means unauthorized in law, thereby creating a jurisdictional defect in the assessment. The actions of the defendants complained of are subject to the following state and federal law securing and guaranteeing the Taxpayeragainst the deprivation by the Defendants now asserted and claimed to have been violated, invaded, and breached by the Defendants.

A. The substantive requirement provision of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, securing and guaranteeing the Taxpayer freedom from the exercise upon him or his property of arbitrary action of State public officers now claimed to have been exercised of assessing the property at $45,000 without any foundation of fact to support the assessment.

B. The mandatory and jurisdictional prerequisites of the empowering statutes, Sections 578 and 597 of the Revenue Act guaranteeing not only opportunity to be heard, but, by necessary implication, to an assessment decision based upon evidence presented and not upon the whimsies of the Defendants.

C. The terms of the Cook County Classification Ordinance operating as a limitation upon the power of the Assessor and the Board of Appeals to review assessments at market value.

It is now asserted, specially set up and claimed pursuant to Title 28 U.S.C. Section 1257 (3) that the Defendants stand before the law legally responsible for their alleged misconduct in direct violation of State and Federal guarantees hereinbefore set forth protecting the Taxpayer from arbitrary conduct exercised upon him and his property by State public officers.

That it is no valid defense to the Taxpayer's State and Federal Complaints that the State of

Illinois acquired in rem jurisdiction over the Taxpayer's property and obtained a judgment against the Taxpayer's real estate arising from the non-payment of the taxes created by the illegal and unconstitutional conduct of the Defendants complained of, because the law provides the State of Illinois with a privilege to sell and to grant a tax deed even where the tax assessment is illegal and unconstitutional. But this privilege of the State to sell the real estate even if the assessment is illegal and unconstitutional does not extend over and reach the Defendants and protect them from personal liability for the improper and invalid creation of an illegal and unconstitutional tax lien in the Taxpayer's real estate in direct violation of his fundamental right of property.

Point Two Taxpayer hereby and now invokes and objects: The Taxpayer objects that under the substantive guarantee of federal due process of law clause of the Fourteenth Amendment he

has a constitutional guarantee that before any instrumentality of the State of Illinois can legally deprive him of an interest in his real property that instrumentality must first provide him with a federally fair hearing on the evidence presented.

Where, as here, both the Deputy-Assessor and the Board of Appeals have denied the Taxpayer of his federally protected fair hearing by the knowing and intentional disregard of competent evidence of value of the real estate and by their unauthorized conduct created an illegal and unconstitutional tax lien interest in the Taxpayers' real estate, then under these facts and circumstances, they are personally liable to the Taxpayer for their invasion of the Taxpayer's fundamental right of property in an action of trespass to property arising during the course of administration of justice and they are equally liable to the Taxpayer in a Federal Civil Rights action for their conduct unauthorized in law by which

the Taxpayer is illegally and unconstitutionally deprived of a legally protected interest in his property.

Point three Taxpayer hereby and now invokes and objects:

Taxpayer objects to and states that by the use of the language of the Court on Page 6 of its Opinion of September 4, 1979, "That judgment therefore stands as res judicata in bar of Plaintiffs present action," this Honorable Court has knowingly and intentionally deprived him of his right to hold the Defendants personally liable for their illegal and unconstitutional creation of a tax lien interest in the Taxpayer's property--a right secured the Taxpayer by the substantive provision of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States now asserted and claimed to nullify the Court's bar upon the Taxpayer's present action. Furthermore, by its action of setting up the judgment of sale as a bar to the Taxpayer's right to hold the Defendants liable for their ultra

vires conduct in assessing the Taxpayer without evidence to support the assessment, then the Court itself has come within the reach of Congressional power and, therby, subject to the legislative enactments of Congress protecting the Taxpayer from the exercise of arbitrary power.

The judgment, therefore, is not in point but simply off the track and is no bar to the taxpayer's present action. The State may obtain in rem jurisdiction in spite of the fact that the tax lien is illegal and unconstitutional. By the use of the judgment to bar the Taxpayer's present actions against the Defendants for invading the Taxpayer's federal right of Due Process securing him the exercise of fundamental fairness in the assessment proceedings, this Court has effectively deprived the Taxpayer of his legally protected interests arising under the Due Process and Equal Protection Clauses of the Fourteenth Amendment now pressed and asserted against the

action of this Court acting outside its authority and beyond its jurisdiction.

Point Four Taxpayer hereby and now invokes and objects:

The State of Illinois, due to its dependence upon the real estate tax levy for its existence, is privileged in law to sell the real estate of an inhabitant for the non-payment of property taxes and to acquire an in rem jurisdiction over the Taxpayer's property, even if the assessment is illegal and unconstitutional, but the privilege of the State is inapplicable to the assessment officers acting under color of their office who are personally liable to the Taxpayer for their knowing violations of the mandatory and jurisdictional requirements of the empowering statutes guaranteeing to the Taxpayer an assessment based upon evidence and their invasion of the inexorable safeguards of federal due process of law--all done by the said Defendants in direct violation of the substantive provision of the Due

Process Clause of the Fourteenth Amendment of the Constitution of the United States now set up and specially pleaded and claimed under Title 28 U.S. C. Sec. 1257 (3).

Point Five Taxpayer hereby and now invokes and objects:

By purposely not including in the body of its opinion the colloquy between the Taxpayer, his Attorney, Commissioner Zaban, and Commissioner Semrow, this court has successfully deemphasized the legal operative significance of the colloquy to such an extent as to deprive the Taxpayer of his Federally protected cause of action.

The point of the conversation not considered and completely overlooked is the fact that Commissioner Zaban did not base the assessment upon the evidence then presented to him by the Taxpayer but side-stepped the legal effect of the evidence at $20,000 and assessed at $45,000, and to accomplish his purpose, used the pay needs of the police and firemen as an excuse

and legal justification to the Taxpayerfor the exercise by him of arbitrary power prohibited by Federal Due Process of law protecting the Taxpayer from just such arbitrary power.

By its improper action of departing from the legal effect of the Taxpayer's legally operative facts, this Court has intentionally and knowingly shielded the Commissioner from liability for his exercise of arbitrary power upon the Taxpayer prohibited him by federal due process of law. Therefore, the Taxpayer, pursuant to Title 28 U.S. C. Sec. 1257 (3), sets up and claims that he has been subjected to the exercise of arbitrary judicial power both by the Commissioner and by this Honorable Court--all done in direct violation of the substantive provision of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

Point Six Taxpayer hereby and now objects and invokes:

That this Honorable Court has intentionally and successfully destroyed the legally operative

effect of the facts and circumstances set forth in the body of the Taxpayer's Brief by referring to the "Forget that actual cash value stuff," statement alleged to have been made by Commissioner Semrow obliquely and out of context by refusing to set forth in the body of the opinion the colloquy establishing that the Commissioner had used arbitrary power upon the Taxpayer by refusing to assess the real estate at market value as required by the Cook County Classification Ordinance operating as a direct limitation upon his power to review the assessment at $20,000 as established by the evidence then before the Commissioner but illegally and unconstitutionally assessed the real estate at $45,000. Therefore, the Taxpayer, pursuant to Title 28 U.S.C. Sec. 1257 (3) here and now sets up and claims that he has been subjected to the exercise upon him and his property of arbitrary power prohibited by the substantive provision of Due Process of law of the Fourteenth Amendment--both by the action taken by the Commiss-

ioner and by this Honorable Court.

Point Seven Taxpayer hereby now invokes and objects:

Pursuant to Title 28 U.S.C. Sec. 1257 (3), the Taxpayer now specially sets up, claims and pleads by complaining:

A. That the Taxpayer has the right to the protection of the Cook County Classification Ordinance guaranteeing him an assessment based upon market value.

B. That the Taxpayer has the right to the protection of the notice and opportunity to be heard language of the empowering statute Section 578 of the Illinois Revenue Act, guaranteeing to him as a necessary implication a hearing where the hearing before the Assessor is based upon evidence.

C. That the Taxpayer has a federally protected right under the substantive provision of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United

States to a decision based upon the evidence presented to the trier and the right to freedom from the exercise upon him or his property of arbitrary executive judicial power of assessing the Taxpayer's real estate without foundation in fact.

D. That in direct violation of these provisions of the law set forth and relied upon, the Deputy-Assessor, Patrick Doody, is alleged to have asessed the Taxpayer's real estate without considering or reading the Taxpayer's evidence of value but set the assessment at $45,000 without any facts upon which to base the decision.

E. That under the Equal Protection Clause of the Fourteenth Amendment the Taxpayer is entitled to the enforcement of these laws, and, by its opinion of September 4, 1979 of not enforcing those laws protecting the Taxpayer, this Honorable Court has effectively deprived the Taxpayer of a legally protected interest in his real estate protected by the Constitution and Laws of the United States.

Point Eight Taxpayer hereby and now invokes and objects:

That where the late Judge Coman granted the Defendants a summary judgment after Judge Brussell had ruled that they Answer for their alleged wrongful conduct, the existence of Judge Brussell's command upon the Defendants created a material fact that barred Judge Coman under the Illinois Summary Judgment Statute from granting the Defendants a summary judgment so that by his action taken without authority in law his order is void. The judgment, therefore, of this Court, affirming the void judgment of of Judge Coman who had no right to require the taxpayer to use the statutory remedy where in the first instance the Defendants through their ultra vires conduct objected to had created an illegal and unconstitutional tax lien upon his real estate by assessing the real estate at $45,000 without any fact to support the assessment. Judge Coman conceded the fact the Defendants may very well have disregarded the Taxpayer's

competent evidence of value. A finding based upon nonfacts is a void finding. This court by its judgment of affirmance has affirmed a void judgment. Therefore, because of this void judgment of affirmance, the Taxpayer is improperly deprived of his legally protected interest to defend himself and his property from the exercise upon it of arbitrary judicial power without facts to support the exercise of such power all beyond the pale of the law. The Taxpayer, therefore, pursuant to Title 28 U.S.C. Sec, 1257 (3) hereby sets up and specially claims that the acts done and complained of above are all ocntrary to the Due Process and Equal Protection Clauses of the Fourteenth Amendment protecting the Taxpayer from the exercise by the State of arbitrary power upon him and his property.

Point Nine Taxpayer hereby and now invokes and objects:

Judge Sarnow, knowing full well that the Cook County Statutory Remedy was not an exclusive

statutory remedy as to assessments unauthorized in law when he cited the Illinois Owens Glass Case, changed his position when he learned that the Taxpayer was relying upon the very case he was citing. He then ruled that the Taxpayer's Federal Civil Rights Action was barred by the Administrative Review Act, not applicable to Cook County at all, which encompassed all other statutory remedies, exceeded the limits of his discretion. His judgment entered beyond his jurisdiction was a void judgment. The order of affirmance of this Court on September 4, 1079 affirming his void judgment, resting upon a void judgment, is also void. All the acts done and complained of by Judge Sarnow and by this Court being in direct violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States.

Pursuant ot Title 28 U.S. C. 1257 (3) the Taxpayer hereby claims that he has been unlawfully and unconstitutionally deprived of a legally protected interest in his property and his Federal

cause of action by the exercise of both courts of judicial power beyond their jurisdiction.

POINT TEN Under the Principle of separation of powers the legislature itself must establish a standard for the guidance of those charged with the administration of the empowering statutes. Taxpayer hereby and now invokes and objects: The Taxpayer hereby and now renews his objection that sections 97 and 116 of the Revenue Act unconstitutionally delegated legislative power because they permit officials to revise assessments as shall appear "just" and asserts that the "just" delegation of authority conferred must be tested by current Illinois law, cited and relied upon by the Taxpayer and brought to the attention of this HOnorable Court on page 9 of his Answer to Supplemental Brief: "The fundamental principle of law has been set forth on pages 20 and 21 of the Plaintiffs Brief: 'Also, due process of law requires that an act shall not be vague, indefinite, or uncertain, and

must provide sufficient standards to guide the administrative body in the exercise of its functions. People ex rel Stamos v. Public Building Com., 20 Ill. 2d 174' cited in People v. Tibbitts, 1973, 56 Ill. 2d 56 at 59, 305 N.E. 2d 152." The Taxpayer specifically objects that the empowering statutes on their face confer unlimited discretion upon the Assessor and the Board of Appeals and there are no standards to govern the scope of discretion conferred. Where the assessment officers have unlimited discretion under the empowering statutes, they are perfectly free to disregard the requirements of the Cook County Classification Ordinance because market value assessments do not appear "just." The people of the State of Illinois have placed a limitation upon the Illinois General Assembly that the Assembly shall not surrender the taxing power and must legislate according to value and uniformly--limitations upon their power that the Assembly in legislating the "just" statutes have violated. Therefore, the Taxpayer,

pursuant to Title 28 U.S.C. 1257 (3), here and now specially set up and claimed, complains that the action of this court in its Judgment of Affirmance of September 4, 1979 has denied the Taxpayer of due process of law and the equal protection of the law guaranteed and securd him by the Fourteenth Amendment of the Constitution of the United States by being subjected to arbitrary power conferred upon the assessment officers by the "just" statutes complained of illegally and unconstitutionally.

Furthermore, the Taxpayer, pursuant to Title 28 U.S.C. Section 1257, hereby sets up and claims complaining that under the Tibbitts case cited and relied upon, he has a federal right to have the statutes measured for standards--something that this Court has omitted to do, and, by means of this omission, has deprived the Taxpayer of the right to have the empowering statutes tested by the Tibbitts case. All this, being done in direct violation of the Equal Protection Clause of the Fourteenth Amendment of

the Constitution of the United States now claimed and asserted.

CONCLUSION

For these reasons the Writ of Certiorari should be granted to review the judgment and opinion of the Appellate Court of Illinois.

Respectfully submitted,

William L. Button

WILLIAM L. BUTTON
Attorney for Petitioners
c/o C. R. Johnson & Co.
7029 N. Clark Street
Chicago, Illinois 60626
(312) 764-8900

APPENDIX

Second Division
September 4, 1979

78-1119

CHICAGO TITLE AND TRUST COMPANY, as Trustee under Trust Agreement Dated april 29, 1971, and known as 1555-57 E. 61st Street Land Trust No. 57100; FRANK G. DOSS and LILA B. DOSS, his wife; HARRY S. NACHMAN and JEAN M. NACHMAN, his wife; KJELL A. LARSEN and DORIS E. LARSEN, his wife,	) Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	) Honorable Raymond S. Sarnow, Judge Presiding.
vs.	
THOMAS M. TULLY, Assessor of Cook County; PARTICK DOODY, Deputy-Assessor of Cook County; SEYMOUR ZABAN, Commissioner of the Board of Appeals; and HARRY SEMROW, Commissioner of the Board of Appeals,	
Defendants-Appellees.	

Mr. JUSTICE HARTMAN delivered the opinion of the court:

A 1974 real estate assessed valuation of of certain property located in the city of Chicago is the focal point of this appeal.

Plaintiffs attack that valuation and the resulting assessment as excessive and further assert: it violates statutory standards; the statute pursuant to which it was made is unconstitutional; and, they have been denied hearings to which they are entitled on these claims. The underlying issue here, however, is whether the circuit court of Cook County erred in granting summary judgment to defendants on the ground that adjudication of the issues asserted by plaintiffs was barred by a prior judgment.

For the reasons stated below, we affirm.

Frank and Lila B. Doss, Harry S. and Jean Nachman and Kjell A. and Doris E. Larsen are beneficiaries under a land trust pursuant to which Chicago Title and Trust Company holds title to certain real estate known as 1555-57 East 61st Street in the city of Chicago. In their amended complaint filed in Cook County circuit court these plaintiffs named as defendants Thomas M. Tully, Cook County Assessor,

Patrick Doody, Deputy Assessor, and Board of Appeals Commissioners Seymour Zaban and Harry Semrow.

The original complaint in this action was filed on or after December 20, 1974 by Frank G. Doss only, naming as sole defendant Thomas Tully, under which judgment for $24,882 plus costs and interest were sought. The basis of the action was section 322 of the Revenue Act of 1939 (Ill. Rev. Stat. 1977, ch. 120, par. 803), which established liability of certain assessment officials who "refuse or knowingly or wilfully neglect any duty" imposed by law. Plaintiff alleged malicious and intentional overassessment or the subject property under the 1974 assessment. A first amended complaint was filed on March 31, 1975 and contained two counts, the first substantially similar to the original complaint, the second proceeding on essentially the same basis for the same amount against Zaban and Semrow. On July 14, 1975 a five-count seconded amended

complaint was filed, naming as parties those involved in the present appeal. Count I of the complaint was dismissed with prejudice and Count II was stricken on November 14, 1975. A third amended Count II was filed on December 10, 1975.

On April 27, 1977, defendants filed a motion for summary judgment on the counts then pending. That motion, with accompanying affidavits and exhibits, showed that real estate taxes were levied against plaintiffs' property for tax years 1972, 1973, 1974, and 1975, which were unpaid. On the basis of the unpaid taxes for 1974, the subject property was listed in the County Collector's 1974 Tax Judgment, Sale, Redemption, and Forfeiture Record, and was dealt with in the annual Judgment and Order of Sale entered in Cook County circuit court on December 5, 1975, which included an express finding that proper notice of the proceedings had been given and no sufficient defense or cause why judgment should not be entered had been shown. Subsequently the property was offered for sale, but was forfeited to the State of Illinois for want of a bidder at the sale. On August 22, 1977, defendants' motion was granted, but because plaintiffs had been granted to file a first amended federal complaint, that order was not made appealable. On February 23, 1978, defendants motion to dismiss plaintiffs' first amended federal complaint was granted, and on April 4, 1978, plaintiffs' motion to vacate both the adverse summary judgment and dismissal of their federal complaint was denied.

We have carefully considered the various counts of plaintiffs' complaint. Because of their length and sweeping terms, however, it would unduly lengthen this opinion to undertake a full wxposition of them. The theoriies on which they are based are epostulated in plaintiffs' arguments on appeal. Plaintiffs' first two contentions on appeal are that sections 97 and 116 of the Revenue Act (Ill. Rev. Stat. 1977, ch. 120, pars. 578, 597), permit unconst-

itutional delegations of legislative powers. Each of these provisions grants authority to assessment officials to revise assessments as shall appear to them "just." Plaintiffs also contend that section 194 of the same act (Ill. Rev. Stat. 1977, ch. 120, par. 675) is unconstitutional as applied because in order to obtain relief thereunder it is necessary to show fraud, so that taxpayers whose property is overassessed but who cannot prove fraud are denied equal protection. Four of plaintiffs contentions relate to allegedly improper assessment practices. They assert that defendants should have, but did not, assess their property at a fixed percentage of its fair market value; that the board of appeals improperly considered budgetary needs of police and fire departments in reviewing the assessment of plaintiffs property; that the fair cash value of the subject property was blatently disregarded; and that defendants improperly applied a rule-of-thumb property valuation, which used only a gross rent mult-

iple and did not allow for building operation expenses.

Plaintiffs also maintain that the hearings they were granted on this complaint for revision of their assessment was so unfair as to deny them their statutory and constitutional rights to a hearing, thereby rendereing invalid the assessment on the subject property. Plaintiffs also contend that a prior hearing on their complaint before Deputy Assessor Patrick Doody was unfair and insufficient.

Plaintiffs' last three points are directed to adverse rulings in the circuit court. They assert that the facts were construed against them when the court granted defendants' motion for summary judgment, and that the court denied them equal protection in refusing them the remedy they sought. Their final argument amplifies the latter point in insisting that plaintiffs should not have been compelled to pursue the remedy provided by statute (Ill. Rev. Stat. 1977, ch. 120, pars. 675, 716 and 751) to

attack the assessment of their property because such a procedure would require them to waive the defects of which they complain: that the assessment was unlawful because it was arrived in violation of mandatory and jurisdictional requirements, particularly the requirement of a fair hearing.

The threshold issue, raised by defendants, is whether plaintiffs present attack on the 1974 assessment of their property is a collateral action barred by either public policy or by the doctrine of res judicata pursuant to the annual judgment and order of sale entered on December 5, 1974 with respect to this assessment of plaintiffs' property. The history of Illinois law regarding collateral attacks on assessments of real property was explicated in Clarendon Associates v. Korzen (1973), 56 Ill. 2d 101, 106-108, 306 N.E. 2d 299. There, the supreme court observed that, prior to 1933, taxpayers could obtain no refund of taxes paid free of duress, so that challenges to taxes

made in the courts without prior payment of the disputed sums, a situation that resulted in impairment of tax collection and of the functions of government. Amendments to sections 162 and 191 of the Revenue Act authorized payments under protest of the tax challenged and requires such prior payment as a condition precedent to filing objections to the county collector's application for judgment. Under this procedure, a taxpayer could obtain a judicial determination of the validity of a tax, or its underlying assessment, and if successful obtain a refund of any excess amounts paid. Subsequently the courts have held that, except where the tax in question is unauthorized in law or levied on exempt property, no relief from allegedly improper taxation may be obtained except by pursuing the statutory remedy. A further exception is recognized where the taxpayer can establish that the tax is constructively or actually fraudulent and that the statutory remedy is inadequate.

The exclusivity of the statutory remedy of paying the tax and filing objections to the collector's application for judgment was again emphasized in Chicago Sheraton Corp. v. Zaban (1978), 71 Ill. 2d 85, 373 N.E. 2d 1318. There a taxpayer's attempt to maintain a separate action to recover damages under section 323 of the Revenue Ac. (Ill. Rev. Stat. 1977, ch. 120, par. 804), which subjects certain assessment officials to liability for double damages caused by their refusal or knowing neglect to perform their duty, was barred by the taxpayer's failure to file objections under the statutory remedy. The supreme court reasoned that since the taxpayer would be required to prove an overassessment of his property in order to prevail under section 323, permitting a separate action for damages under section 323 where no objection had been filed would provide a means of evading the statutory remedy and give the taxpayer a second chance to litigate an issue that ought to have been litigated by

pursuing the statutory remedy. In the present case, plaintiffs porceeded under section 322, which provides damages, but not double damages; nevertheless, Sheraton is clearly controlling because permitting a separate action under section 322 would have the same effect as permitting a separate action under section 323.

Plaintiffs argue that their action falls within an exception to the general rule established by these cases barring collateral actions where a taxpayer has not pursued the statutory remedy, in that the tax here in question was "unauthorized by law." This conclusion is based upon the theory that the statutes pursuant to which it was imposed are unconstitutional, and the hearings accorded plaintiffs were a sham. That exception does not apply to these facts.

Plaintiff's attempt to avoid the effect of their failure to pursue the statutory remedy for overassessment by challenging the constitutionality

of assessment stautes must be rejected for two reasons. First, this issue, like the question of the amount of assessment of their property, is one that could have and therefore ought to have been raised in an objection proceeding; the judgment entered on the collector's application therefore must be deemed to act as a bar to further litigation. (La Salle Nat'l Bank v. County of Cook (1914), 57 Ill. 2d 318, 324, 312 N.E. 2d 252.) Second, the validity of that judgment, and therefore of its operation as a bar, does not depend upon the lawfulness of the assessment. As stated in First Lien Co. v. Markle (1964), 31 Ill. 2d 431, 436-37, 202 N.E. 2d 26, the trial court had in rem jurisdiction of the property and the power to enter judgment against it, so that "(w)hether the assessment was erroneous or illegal, the trial court had jurisdiction to determine the validity of the assessment, and that determination, no matter how erroneous, is conclusive upon the parties after thirty days, unless grounds

exist for a petition under section 72 of the Civil Practice Act."

Plaintiffs assert that they are entitled to avoid the bar of that judgment by virtue of Pennoyer v. Neff (1878), 95 U.S. 714, based upon the notion that Pennoyer deprives void judgments of res judicata effect; however, Pennoyer holds only that judgments entered by courts lacking jurisdiction are void and without res judicata effect. The circuit court in the present case had in rem jurisdiction to enter judgment on the collector's application with respect to plaintiffs' property. (See, e.g., Smith v. D.R.G., Inc.(1976), 63 Ill. 2d 31, 35, 344 N.E.2d 468.) That judgment therefore stands as res judicata in bar of plaintiffs' present action.

Nor does the allegedly defective hearing before Commissioners Zaban and Semrow evoke the exception. Assuming arguendo such defects exist, inasmuch as they are essentially procedural irregularities, they do not render the

assessment one which is "unauthorized by law" for the purpose of exempting the taxpayers from the requirement that they pursue the statutory remedy of filing objections to the collector's application. Inolex Corp. v. Rosewell (1978), 72 Ill. 2d 198, 380 N.E. 2d 775; North Pier Terminal Co. v. Tully (1976), 62 Ill. 2d 540, 548-49, 343 N.E. 2d 507.

In the present case, plaintiffs do not contend in their complaint for revision of their assessment that they did not receive notice, nor do they deny that hearings were held. Instead, they claim that those hearings were so unfair and in such flagrant disregard of their evidence as to amount to no hearing at all. The due process requirement of a hearing, however, means only the right to be heard at some time before the liability to pay the tax becomes conclusive, and not at any particular stage. (Chicago Sheraton Corp. v. Zaban (1979), 71 Ill. 2d 85, 90-91, 373 N.E. 2d 1318; Dietman v. Hunter (1955), 5 Ill. 2d 486-488-89, 126 N.

E. 2d 22.) Plaintiffs are not complaining of a failure to provide them with a hearing at the time the assessment originally was made. Moreover, the judgment and order of sale entered upon the collector's application, which included plaintiffs' property, recited that plaintiffs had been given notice of that porceeding, so that had plaintiffs so chosen, they could have obtained a hearing at that stage of the tax collection process. (Ill. Rev. Stat. 1977, ch. 120, par. 716.) Accordingly, accepting hypothetically plaintiffs' argument that the hearings on their complaint for revision were defective, it would not follow that they were denied constitutional due process, because hearings at two other stages of the assessment process were available to them.

It is ture, as plaintiffs point out, that a statutory provision mentions the holding of a hearing on complaints phrased in mandatory language. That provision, section 97 of the Revenue Act (Ill. Rev. Stat. 1977, ch. 120,

pars. 578), provides in pertinent part:

> " 888 the county assessor shall have authority annually to revise the assessment books each year and correct the same as shall appear to him to be just and on complaint in writing in proper form by any taxpayer, and after affording such taxpayer an opportunity to be heard thereon, he shall do so at any time, until the time that the assessment is verified."

This language creates a mandatory condition for lawful exercise of the authority to revise assessments; however, no revision occurred here. Section 97 does not void assessments previously made if no hearing is held, but only revisions made without hearing. None of the decisions relied upon by plaintiffs suggest a contrary result.

All the issues raised in this appeal by plaintiffs could have been raised by way of objection to the collector's application, the circuit court having had jurisdiction to hear all justiciable

matters. (See, e.g., La Salle Nat'l Bank v. County of Cook (1974), 57 Ill. 2d 318, 324, 312 N.e. 2d 252; Stevens v. The Protectoseal Co. (1975), 27 Ill. App. 3d 724, 729, 327 N. E. 2d 427.) Because plaintiffs' situation is not one recognized as creating an exception to the general rule that collateral attacks on assessments are barred, all must be regarded as conclusively and adversely adjudicated by the judgment on the collector's application. By failing to object to that application, of which they were given notice, plaintiffs relinquished their opportunity for a hearing on the merits of these issues.

Plaintiffs' points on appeal do not sustain their position irrespective of our res judicata finding. As to the contention that sections 97 and 116 of the Revenue Act unconstitutionally delegate legislative power because they permit officials to revise assessments as shall appear "just", we find that when the term is considered in conjunction with other constitutional and statutory standards relating to assessments, the

asserted constitutional infirmity is dissipated. These standards begin with article IX, section 4 (a) of the 1970 Illinois Constitution (Ill. Rev. Stat. 1977, Const., art. IX, par. 4(a)), which provides for taxes to be levied uniformly by valuation ascertained as the General Assembly shall provide by law, except that Cook County may classify property, as privided in section (b). Cook County has adopted such a classification ordinance (J. Proceed. Bd. of Comm'rs of Cook County, Nov. 19, 1973, pp. 5162-63) which requires assessments to be based upon a percentage of market value, defined as the price property " *** would bring at a fair, voluntary sale," a standard which has long been recognized as valid. (People ex rel Rhodes v. Turk (1945), 391 Ill. 424, 427, 63 N.E.2d 513.) Section 20 of the Revenue Act (Ill. Rev. Stat. 1977, ch. 120, par. 501), provides that property be given a valuation based on its fair cash value at a fair, voluntary sale. Accordingly, the language authorizing revisions of assessments

as shall appear "just" contemplates making adjustments which are in harmony with the requirements of uniformity and relation to fair cash value of property within the class of property.

Plaintiffs next contend that section 194 of the Act violates due process in that only those persons whose property is so grossly overassessed that the assessment is constructively fraudulent or fraudulent are given a remedy under it. The statute itself does not provide, however, and no decisional authority has been cited or found indicating that remedies under section 194 are so restricted. Section 194 directs the court to "hear and determine the matter according to the right of the case and enter judgment for any part of the taxes, or order a refund of any part of the taxes, so paid under protest." Ill. Rev. Stat. 1977, ch. 120, par. 675.

Plaintiffs complain of the manner in which the amount of the assessment of their property

was derived. They allege that proper factors were ignored and improper factors taken into account, in that defendants: used rule-of-thumb based upon the property's income without taking into account its operating expenses, improperly considered budgetary needs of government agencies; and disregarded evidence of the property's market value. The hearing complained of dealt not with the assessment of their property, but with their complaint for revision of that assessment. Accordingly, the significance of the hearings on plaintiffs' complaint as evidence of how the assessment was made is incidental. Certain statements made by Commissioners Zaban and Semrow, of which plaintiffs complain, do not establish error. The comment made by Commissioner Zaban regarding the salaries of police and firemen does not amount to a statement that plaintiffs' property's assessment was affected by this consideration in any direct fashion. Likewise, his statement that the assessment was set at $45,000 "for tax purposes" is ambiguous at best. Both statements take notice of the ultimate function of property assessments as a basis for levying taxes to fund governmental activity, and a general concern that property not be underassessed lest inadequate revenue be generated; neither separately nor together do they establish that assessments were calculated on the basis of budgetary needs rather than value of the property. The remark made by Commissioner Semrow to "(f)orget that actual cash value stuff," does, in isolation, suggest a possible disregard for the proper standard for valuation, but it was made after plaintiff Doss and his attorney insisted that the comissioners accept their evidence regarding the appraisal of the property and the sale of a half-interest in it. In that context, the remark may well have been an unfortunately worded way of expressing distrust of the type of evidence offered as failing to meet the "fair voluntary sale " standard, notwithstanding its supposedly direct nature.

Plaintiffs describe a system, which they call a rule-of-thumb, used by assessment officials in Cook County for setting assessment levels that relies on income and expenses from operation of the property. Plaintiffs allege that such a system ignores the fair market value of property, and in any event fails to adequately take into account their expenses in operating their property. It is recognized, however, that determination of fair market value may be accomplished in a number of ways, as noted in People es rel Toman v. Pickard, (1941), 377 Ill. 610, 37 N.E.2d 330.[1/] Obviously, the value of land has some relation to its income and expenses. Equally obvious is the fact that a single appraisal is not inevitably reliable.

1/ Although Pickard contemplates "fair cash value," that term has been interpreted synonymously with "fair market value" in People ex rel. Frantz v. M.D.B.K.W., Inc. (1966), 36 Ill. 2d 209, 221 N.E. 2d 650 and People ex rel. Korzen v. American Airlines, Inc. (1968), 39 Ill. 2d 11, 18, 233 N.E. 2d 568.

The sale price of property does not necessarily establish its value without further information on the relationship of the buyer and seller and other circumstances. Conversely, the use some kind of formula based on income of property, while indirect in nature, would not unavoidably fail to reflect the fair market value. Whether the particular formula applied to plaintiffs' property produced a proper figure cannot be determined from the facts asserted by plaintiffs. For the purpose of discussion, assuming the figure arrived at was incorrect, such error would constitute a mere mistake and would not render the assessment one "unauthorized in law." Mid-Continental Realty Corp. v. Korzen (1976), 40 Ill. App. 3d 133, 139, 351 N.E. 2d 376.

As reflected in their amended federal complaint in the circuit court, plaintiffs claim that their civil rights were violated by rulings of the circuit court. They argue first that, in granting defendants' motion for summary judgment, the circuit court discriminated against

plaintiffs by construing the facts against them and denied them a fair hearing. The only fact of relevance to the summary judgment, however, was the entry of judgment on the collector's application; this fact is not disputed. Regarding the hearing plaintiffs desired, as previously stated, such a hearing could have and should have been obtained during the proceedings on the collector's application.

Plaintiffs next contend that the circuit court discriminated against them by refusing to give them the benefit of a rule of law the validity of which was acknowledged by the circuit court, namely, that taxpayers are not confined to the statutory remedy of the Revenue Act when they are objecting to a tax unauthorized in law. That rule is clearly valid, but is not applicable merebly because plaintiffs allege that the tax in question was unauthorized. As stated in the preceding analysis, the defects in the assessment process alleged by plaintiffs did not render the tax involved unauthorized. (Inolex Corp. v.

Rosewell, supra; North Pier Terminal Co. v. Tully, supra.) Moreover, plaintiffs have mischaracterized the circuit court's position. The court indicated that, if the tax in question were unauthorized, plaintiffs would not be confined to the statutory remedy, asserting that plaintiffs were not claiming the tax was unauthorized. Plaintiffs countered that they were indeed contending that the tax was unauthorized, but the court nevertheless refused to grant them a new hearing. To suggest that the court had committed itself to granting a collateral remedy to plaintiffs based merely on what they have alleged is unsupportable.

Finally, plaintiffs contend that the principle of exclusivity of the statutory remedy as applied by the circuit court unconstitutionally required them to waive the very defects of which they complained, particularly the failure of the assessment officials to give them a fair hearing, which they interpret as a mandatory and jurisdictional requirement under the statute and a

requirement of due process under the federal and Illinois constitutions. This argument is essentially a repitition of other points already discussed; it seeks to exempt plaintiffs from compliance with the statutory remedy because they object to it. Had plaintiffs followed the statutory remedy, they could have raised all their objections during the proceedings on the collector's application, and could thereby have preserved those issues for review. Instead, plaintiffs elected to forego the procedure specified by statute thereby allowing these issues to be barred by the judgment entered on the collector's application.

For the foregoing reasons, the judgments of the circuit court must be affirmed.

Affirmed.

DOWNING and PERLIN, JJ., concur.

52603

ILLINOIS SUPREME COURT
CLELL L. WOODS, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

November 29, 1979

Mr. William L. Button
Attorney at Law
c/o C. R. Johnson & Co.
7029 N. Clark Street
Chicago, IL 60626

No. 52603 - Chicago Title and Trust Company, as Trustee, etc., et al., petitioners, vs. Thomas M. Tully, Assessor of Cook County, et al., etc., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

Clell L. Woods

Clerk of the Supreme Court